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HUMAN RIGHTS COMMITTEE

Thirty-sixth session

SUMMARY RECORD OF THE 956th MEETING

Held at Headquarters, New York,
on Wednesday, 21 March 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Organizational and other matters (continued)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Initial report of Argentina (CCPR/C/45/Add.2)

1. At the invitation of the Chairman, Mrs. Regazzoli (Argentina) took a place at the Committee table.

2. Ms. CHANET thanked the Argentine representative for the further information she had provided and for her explanation of the relative status of legal norms in Argentina. It would have been helpful, however, to have more information on the procedure available to individuals to claim their rights under the Covenant and on any specific cases in which that right had been invoked. Mrs. Regazzoli had provided the names of members of the military who had been sentenced for their illegal acts and absolved under the presidential pardon of 1989; her explanation had been less than satisfactory, however, as there could be no justification for carrying out a clearly illegal order such as one involving torture.

3. Moreover, she remained uncertain whether legal remedy was available through the courts for victims of administrative actions. She also continued to have some doubts as to the actual situation obtaining under a state of siege, in particular with regard to what powers had been given the authorities to infringe certain human rights and what rights remained non-derogable.

4. In the light of the information provided by the Argentine representative, it was clear that considerable efforts were being made to identify abducted children and return them to their families.

5. It was to be hoped that an effort would be made to review the special status granted to the Roman Catholic Church and to bring the situation closer to the norms established under the Covenant.

6. With regard to the question of torture, she would have liked to know more about what controls were exercised to ensure that the authorities did not abuse their power.

7. Mrs. HIGGINS noted that the Covenant had come into effect in August 1986 and that both the "punto final" and "due obedience" laws had been enacted later; the Committee clearly had the right to examine those enactments from the point of view of their compatability with the Covenant, and particularly article 2, paragraphs 1, and 2 and article 7. Moreover, with respect to torture, the question arose of whether the enactments would help to ensure that acts of torture would not recur.

8. Apart from the question of punishment, moreover, there was also a duty to investigate and to provide compensation to all victims of illegal acts, not only those involved in the specific cases referred to by the Argentine representative.

(Mrs. Higgins)

9. Mrs. Regazzoli had referred to social peace and reconciliation as goals which must be given priority. That argument would have had greater force if the population had been allowed to decide what values should be given priority.

10. Although those questions remained matters of concern, it must be understood that the Committee saw them in the context of the general movement towards greater ensurance of human rights that was taking place in Argentina.

11. Some members of the Committee had spoken of the Argentine representative's reservation under article 15 (2) of the Covenant. She wished to place on record her own firm view that what was involved was not a reservation but an interpretive declaration.

12. Mr. MYULLERSON said that he had great sympathy for the efforts being made by the civilian Government of Argentina to ensure civil and political rights, particularly at a time of economic difficulties and in the light of the need to ensure national reconciliation. He would note only, in connection with the question of acts committed by the military, that the Covenant required that all disappearances should be investigated and that no person whose human rights had been violated should be without legal remedy.

13. Mr. WENNERGREN recalled that he had had occasion, in the case of Uruguay, to state his view that enactments such as the punto final and due obedience laws should not be passed. However, regardless of the question of whether those laws were compatible with the Covenant, Argentina had other obligations under article 2 of the Covenant and had agreed to fulfil them and to provide compensation to the victims of illegal acts.

14. Mr. WAKO said it had emerged from the constructive dialogue now ending that Argentina was committed to carrying out its obligations under the Covenant, although it faced understandable difficulties in its efforts progressively to create a climate in which human rights were respected. He associated himself with the remarks made by other Committee members on the punto final and due obedience laws and the reservations expressed with regard to Decree 392/90. The introduction of the military into a matter which was essentially one for the police seemed potentially dangerous.

15. Recalling that he had asked some questions concerning the status of indigenous peoples which had gone unanswered for lack of time, he expressed the hope that the information he had requested would be forthcoming in due course.

16. Mr. ANDO said it was necessary for the Argentine Government to continue its efforts to investigate as well as redress past violations of human rights. It should also, at some appropriate time, review the constitutional restriction of eligibility for certain posts to persons belonging to the Roman Catholic faith.

17. He appealed to the Argentine Government to make every effort to inform its people concerning the dialogue that had just taken place between it and the Human Rights Committee.

18. The CHAIRMAN noted that the Committee's primary concern was not whether the due obedience and punto final laws conformed with the Argentine Constitution but whether they conformed with the Covenant. The question of torture had been singled out by the Committee, understandably, because it had been a great evil in Argentina. Another point emphasized by Committee members had been that of the questions of religious freedom and religious equality; they were important because restrictions imposed in those respects were an assault on human dignity; in his view, those issues were urgent enough to call for immediate action.

19. He expressed the hope that the issues raised by the Committee would be dealt with in Argentina's second report, which was due by November 1990.

20. Mrs. REGAZZOLI (Argentina) expressed appreciation of the Committee's comments and recommendations to her Government. With regard to some points which she seemed not to have explained adequately in her previous statements, she wished to make it clear that in Argentina everyone could claim redress for wrongful actions directly under the Covenant; that the Argentine Government had enacted three laws, on which additional documentation would be submitted to the Committee, regarding compensation for the children and grandchildren of persons who had disappeared; and that the Argentine Government was making an effort to disseminate information on the human rights guaranteed by the Covenant.

21. On the matter of indigenous inhabitants, she would add that according to the latest census, taken in 1966, there were 302,000 such inhabitants, and that their rights were completely protected.

22. On a final, personal, note, she wished to assure the Committee that, as a victim of imprisonment and torture herself, she would work tirelessly to ensure that her children and grandchildren enjoyed the benefits of human rights.

23. Mrs. Regazzoli withdrew.

The meeting was suspended at 3.45 p.m. and resumed at 4 p.m.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment on article 23 of the Covenant (CCPR/C/38/CRP.1)

24. Mr. NDIAYE, speaking as Chairman/Rapporteur of the Working Group on Article 40 of the Covenant, introduced the draft general comment on article 23, which had been prepared by the Working Group on the basis of an original draft by Mr. El-Shafei and the subsequent recommendations of the previous Working Group.

25. Paragraph 1 of the draft dealt with all the legal means available for the protection of the family, and reference was made to other articles of the Covenant and other international instruments.

READEX FICHE

(Mr. Ndiaye)

26. Paragraph 2 brought out the relativity of the concept of the family, and its scope. Paragraph 3 took up the measures that States parties should adopt to protect the rights of the family. There the difficulty had arisen of defining "society" and what was to be expected of a society, and the Working Group had not yet resolved it. Mr. Cooray, having reviewed the travaux préparatoires for the Covenant, had not found them helpful in the matter, except perhaps those relating to the Universal Declaration of Human Rights.

27. Paragraph 4 dealt with marriage and the restrictions on the right to marry; paragraph 5 with the right to found a family and its implications; paragraphs 7, 8 and 9 with non-discrimination as to marriage, during marriage and at its dissolution; and paragraph 10 specifically with the dissolution of marriage. The final paragraph 11 considered the recovery of parental authority in cases where it had been lost.

28. Mr. POCAR observed that the topic was a very difficult one. In reading the text, he had had the impression that States were invited too often to inform the Committee about how they were applying article 23. Perhaps the Committee itself should give more guidance by further elaborating the meaning of the article.

29. Paragraph 1 of the draft general comment was very general and needed fleshing out. It did not clearly indicate how the Working Group had viewed the relationship between paragraph 1 of article 23, which spoke of the protection of the family as such and had been dealt with separately in the draft general comment, and the other paragraphs of article 23, concerning protection of the members of the family. The general comment should at the outset expand upon that relationship. While he would in paragraph 1 suggest referring to the other articles of the Covenant with a bearing on the family, he doubted the advisability of bringing in references to other international instruments.

30. Also, he thought it premature to refer to article 23 (4) at the end of paragraph 2 before that paragraph of article 23 had been touched upon. He agreed that the notion of society should be defined in paragraph 3.

31. Paragraph 6 asserted that consent to marriage should be expressed by the spouses in the presence of a competent authority in a form prescribed by law, but he would delete the reference to the competent authority, since it was not universally applicable. Non-discrimination as to marriage could not be applied only to sex-based discrimination as had been done in paragraph 7: article 23 itself spoke of "equality of rights" as to marriage, a much broader concept than non-discrimination.

32. He did not see the point of the last sentence of paragraph 9, which said that the principle of non-discrimination also implied that a wife should have the right to travel without the consent of her husband. Surely such consent must be bilateral, and the matter was therefore one of equality, not discrimination. Also, he found the second sentence of paragraph 10 too weak when it asked States parties to give information concerning "necessary protections" for children at the

(Mr. Pocar)

dissolution of a marriage. In its general comment on article 24 and the rights of the child, the Committee had gone further, maintaining that if a marriage was dissolved, the principle of the protection of the child must prevail over the principle of the equality of the spouses.

33. Mr. FODOR said that in practice many more factors could be identified as impediments to marriage than those that had been referred to in paragraph 4. He could think of restrictions on marriage based on national and social origin, property and perhaps even religion. Such impediments, of course, were of a very different type and therefore it would be best to have a separate paragraph regarding non-discrimination in relation to the right to marry; sex-based discrimination had been mentioned, for instance, in paragraph 8, and paragraph 9 referred to a wife's right to travel. The reference in paragraph 5 to the need for compatability between marriage legislation and freedom of conscience and religion would not in his view obviate the need to include religion when speaking of restrictions and impediments.

34. Mr. ANDO observed that article 23 (2) and (3) referred to the conditions necessary for founding a family, and the general comment should elaborate on that. Article 23 (4) referred to equality of rights rather than to non-discrimination, and the general comment should take that same perspective.

35. More thought should be given to the description of the family as the "group unit of society" in paragraph 1 of the general comment. If indeed that paragraph referred to other instruments, it had to be a more relevant reference to specific points in those documents. It might be well, in paragraph 2, to go into the kinds of protection afforded by individual States for the various types of families. With regard to the question left unresolved in paragraph 3, the Working Group could perhaps, with some help from the secretariat, provide the Committee at the next session with something concrete called from the travaux préparatoires and any relevant practice. He was not sure what difference there was between protection by the State and protection by society, and the point needed further elaboration.

36. Since marriage was such an important institution, both religious and State authorities were involved, although their respective degree of involvement varied from age to age. That should be touched on in paragraph 6. Paragraph 8 on non-discrimination needed elaboration. In paragraph 9, the choice of residence should be listed among the matters arising from the relationship of the spouses - unless it was deemed to be included in the running of the household, which had already been mentioned. Also, not only a wife's but also a husband's right to travel should be mentioned.

37. Mr. WAKO observed that article 23 was one of the few where traditions, customs and values could impede enjoyment of a right. He himself liked certain elements in Mr. El-Shafei's original draft which had been eliminated, such as his mention by way of example of some of the threats to marriage. States parties should be asked to single out any such economic, cultural or social threats in each instance and specify what they were doing to protect against them.

38. Mr. MAVROMMATIS said that Mr. El-Shafei was to be commended for his daring in being the first to tackle such a difficult and controversial subject. There were so many approaches to the question of the family, stemming from so many social and cultural structures. In its consideration of reports, the Committee had not generally raised many questions on article 23 or given much thought to all its ramifications. The draft general comment might prove to be more than it had bargained for.

39. He would prefer a more striking opening sentence in paragraph 1 that did not simply restate article 23 but said why the family was so important, why it was the basic unit and needed protection. The paragraph could then go on to what was being protected. The reference to other international instruments should be more general in his view, and not an enumeration.

40. Clearly, more research was needed before the difference between the protection of society and the protection of the State could be spelled out in paragraph 3.

41. With regard to paragraph 4 of the draft general comment, he did not think that incest was an impediment to marriage; it was an abhorrent crime and was covered under the term "consanguinity". Marriage should not be prohibited because it was preceded by an incestuous union; rather it should be prohibited because it was within the prohibited degrees. The Committee should be careful not to introduce the notion of incest.

42. Paragraph 2 of article 23 of the Covenant recognized the right of men and women of marriageable age to marry and to found a family. Such recognition entailed a number of obligations on the part of the State, which must make arrangements, through national legislation or other means, to provide its nationals with the right to marry in accordance with the Covenant. In Cyprus, marriage between members of the Greek Orthodox Church or other Christians took place only in church. Christians could not have a civil marriage. The Cypriot Government did not provide for a non-religious marriage for agnostics if they were the children of Christian parents. It was therefore important to mention the obligation of the State to provide for both marriage and divorce for people who did not want a religious marriage.

43. With regard to paragraph 7, he did not know whether discrimination was sex-based since, in given circumstances, there could be discrimination against either sex. He would, however, accept the term "sex-based" if the Committee was unable to come up with a better term.

44. Paragraph 8 was very important. The Committee should agree on a further elaboration of the question of nationality of both spouses and children, because there were similar provisions elsewhere which could be incorporated into paragraph 8. However, he could accept the text of paragraph 8 as it was currently worded.

45. With regard to paragraph 9, he wondered whether the right of a wife to travel without the consent of her husband had been the Working Group's only concern. He

(Mr. Mavrommatis)

proposed that the last sentence of the paragraph should be either dropped or made much more general by the inclusion of a few examples.

46. In paragraph 10, the Committee should indicate clearly that the same grounds for divorce could be invoked by both husband and wife. There were many societies in which the husband could obtain a divorce on grounds not available to the wife. Before canon law was abolished in Cyprus, the husband had at least two grounds for divorce which were not open to the wife.

47. Ms. CHANET said that article 23 was strangely constructed, since it referred to concepts which differed from one culture to another. The Committee should follow Mr. Pocar's advice and link all the paragraphs of the draft general comment and then tie them all to paragraph 1. The Committee should not try to define widely varying concepts, nor should it define a right in a way which would make it more an economic, social and cultural right than a civil and political right. In paragraphs 2, 3 and 4 of article 23, the drafters of the Covenant were referring to civil rights, such as the right to marry or not to marry, or the right not to be forced into marriage, and equal rights for men and women during marriage and at its dissolution. That was, essentially, the kind of information which the Committee should request from States.

48. With regard to paragraph 1 of the draft general comment, she agreed entirely with what had been said by Mr. Pocar. The Committee should avoid mentioning other human rights instruments which referred to the protection of the family or non-discrimination. The Committee should refer only to other articles of the Covenant.

49. In paragraph 2, the Committee should not refer to paragraph 4 of article 23. Morever, paragraph 3 of the general comment should be clarified, since she found it incomprehensible.

50. Paragraph 4 of the general comment referred to both paragraphs 2 and 3 of article 23 and was therefore somewhat confusing. Further, it was not advisable to make lists, since there were things which could be omitted or over-emphasized, or which were subject to different interpretations. For example, Mr. Mavrommatis' understanding of incest was completely different from hers. There were societies which recognized marriage in cases which Mr. Mavrommatis would consider to be incestuous. In France, incest was related to consanguinity.

51. In paragraph 5, the Committee was again running the risk of mentioning some things but leaving out others which were just as serious and should be specified.

52. In paragraph 6, she did not see the need for the Committee to refer to "competent authority", since there could be marriages which did not take place before a competent authority. The essential thing was that marriages should take place in a form prescribed by law.

(Ms. Chanet)

53. In paragraph 7, reference to sex-based discrimination should be avoided since there were forms of discrimination which existed as a result of marriage between two people and which involved discrimination on the basis of status or role and not necessarily on the basis of sex.

54. In paragraph 8, the Committee should not speak of non-discrimination with reference to the nationality of the spouse, since there were other forms of discrimination resulting from marriage.

55. In paragraph 9, the reference to the right of a wife to travel without the consent of her husband was somewhat incongruous. It was also not advisable to state that the two spouses should have equal authority and responsibility in the family, since that was not included under article 23. The Committee could not require the two spouses to resolve by mutual agreement all matters arising from their marriage; in some cases, the spouses might have to resort to a judge. Paragraph 4 of article 23 referred only to the "equality of rights and responsibilities of spouses", not to their equality in resolving matters in which neither spouse was competent.

56. Mr. EL-SHAFEI said that the new text of the general comment prepared by the Working Group lacked some of the cardinal points contained in his original text. In writing the initial draft, he had felt the need to include a paragraph or two indicating the purpose of referring to international human rights instruments other than the Covenant. He agreed that paragraph 1 in the general comment prepared by the Working Group looked very separate and did not seem particularly relevant. Unless the Committee explained why it was referring to the other instruments, the paragraph would be redundant.

57. Something else was missing in the new draft. The general comment should indicate that the Committee had noticed that very meagre information had been provided about article 23 of the Covenant. The original draft had contained the sentence: "The Committee has noted that, in a number of cases, information appearing in the reports with respect to article 23 has contained no concrete mention either of legislative or administrative measures or of practical steps to ensure the kind of protection provided for in the numerous United Nations human rights instruments mentioned earlier". If the Committee did not wish to mention the other human rights instruments, it could say "provided for in the International Covenant on Civil and Political Rights".

58. He agreed with other members of the Committee who had mentioned the question of impediments. The question of the right of a wife to travel without the consent of her husband was only a detail. Further, he did not see the need to explain the different concepts of society.

59. Mr. LALLAH said that, in dealing with article 23 of the Covenant, the Committee had been faced with two major difficulties. First, while non-governmental organizations provided a great deal of information on a number of other articles, article 23 was not one of them. Secondly, when the Committee had

(Mr. Lallah)

considered reports by States parties, very few members of the Committee had asked detailed questions about article 23. As a result, the Committee's experience in obtaining responses from States parties on that article had been rather meagre. However, that did not mean that the Committee should abandon the idea of having a general comment on the article.

60. Referring to paragraph 1 of the draft general comment, he said that it was not a good idea to enumerate the other human rights instruments which dealt with the matter. The Committee was addressing the general comment to States parties to the Covenant, and some of those States parties might not be parties to the other instruments. Therefore, reference to other human rights instruments was not particularly desirable unless there was some particular reason for mentioning them.

61. Mr. DIMITRIJEVIĆ said that the Committee had never had a debate on the exact meaning of article 23, and that perhaps the general comment should invite the States parties to help the Committee elucidate the article. For example, Mr. Mavrommatis had pointed out that, in many legal systems, matters relating to the family were relegated by the State to the Church, and ceremonies conducted by the Church were recognized by the State as having legal effect. The Committee should probably refer to that matter in its general comment on article 23, and it should indicate that States which relegated family matters to the Church were not released from their obligation to control such matters and to ensure that they were dealt with in accordance with the provisions of the Covenant.

62. While the Committee should not refer to other human rights instruments, it should take account of other provisions of the Covenant which were relevant to article 23. For example, the Committee left it to the State to determine what were the restrictions on and impediments to the right to marry. The Committee should state clearly that impediments and restrictions should not be contrary to article 23 or other provisions of the Covenant. That also applied to the interpretation of the free consent of young people entering into marriage. In a number of States, in addition to - or even instead of - such consent, consent was given by a third party. The Committee should state very clearly that the only valid consent was that of the persons entering into marriage.

63. The Committee should determine, perhaps by referring to the travaux préparatoires, whether divorce was a right under article 23. Article 23 seemed to proceed only from the assumption that, in the case of the dissolution of a marriage, there should be equality of the spouses. The article did not specify that there was a right to a divorce. The Committee should state that it understood article 23 to mean that the right to divorce was equal and based on the freely expressed will of both spouses and the judgement of society through a competent court or other organ which ensured the equality of the spouses. On the other hand, perhaps the Committee should state that, in cases where divorce was possible, there should be absolute respect for the equality of the spouses.

(Mr. Dimitrijević)

64. In paragraph 5 of the general comment, there seemed to be a prejudice against any kind of effort of a society to encourage family planning. The Committee should change the stress of that paragraph and state that efforts on the part of a society to encourage family planning in the interests of society could not be construed as endangering the family or marriage if such measures were not discriminatory or compulsory.

65. He also shared the views of other members of the Committee that discrimination within the family was not necessarily sex-based but could also be based on a number of other circumstances. The Committee should be more careful in giving examples. The freedom of a wife to travel without the consent of her husband was trivial in comparison with other possible examples. In particular, the Committee should address the question of freedom of residence. Very often spouses were not free to choose their place of residence without the consent of the other spouse.

66. It was also important to address the problem of the dowry and of customs that constituted impediments to marriage for those with insufficient means. A dowry implied obtaining the consent of persons other than the prospective parties to the marriage. Even the non-governmental organizations did not address that problem adequately and the Committee should encourage Governments to deal with it.

67. Mr. COORAY proposed that the words in brackets in paragraph 3 should be omitted. He had consulted the travaux préparatoires and had found that the United Kingdom delegate had felt that only the State, and not society, could protect the family, that the Soviet representative had felt that the State and society should protect the family, and that other representatives had agreed that the law alone could not protect the family.

68. Mr. AGUILAR URBINA said that he agreed with the previous speaker because the concept of society was a changing one. Paragraph 3 of the draft general comment raised doubts in his mind and required clarification. Paragraph 4 was confusing because it referred first to age, then other factors and then age again. In referring to restrictions or impediments, it used the word incest, which bothered him. In Latin America, incest was a crime involving consanguinity. It was covered by criminal law and therefore not a factor which impeded marriage. The last sentence of paragraph 4 was disturbing because many impediments would not be included. Societies differed greatly and the Committee must know which factors were discriminatory.

69. In paragraph 5 of the general comment, he felt that the penultimate sentence should be more comprehensive and more detailed. In paragraph 6 he would omit the words "competent authority" because means of protection differed and no authority should interfere. Turning to paragraph 8, he said that sex-based discrimination was not the only form of discrimination that should be rejected. In paragraph 9 he felt that the reference to the wife's right to travel should be clarified or deleted.

70. Mr. WENNERGREN drew attention to article 16, paragraph 1, of the Universal Declaration of Human Rights, which spoke of "equal rights as to marriage" and noted that paragraph 4 of the general comment referred to impediments to the exercise of the right to marry.

71. It would be difficult to establish a formal link between the four paragraphs of article 23 because they dealt separately with the family and its components. Turning to paragraph 3 of the general comment, he said that he had argued in the Working Group for defining the "other measures" referred to in the first sentence and for specifying that the State should act through society to support the family, thereby making society a mediator between the State and the family.

72. Mrs. HIGGINS said that she had found the comments quoted by Mr. Cooray in connection with the travaux préparatoires extremely interesting and agreed that legislation was not sufficient to protect the family. The Committee should recognize that not much legal experience was available and should content itself with starting a dialogue. The Committee should avoid any reference to a right to dissolution of a marriage because the issue of divorce was a controversial one. The four paragraphs of article 23 were disparate clauses because paragraph 1 referred to a group right and the other referred to individual rights.

73. Mr. NDIAYE said that the Committee needed feedback from States parties about their actual practice in the matters referred to in article 23. The Committee was also also limited in what it could do by the need for consensus.

74. The first paragraph of article 23 contained a fallacious assumption. The family was not the natural unit of society. It was a relatively recent phenomenon. Society had protected the family long before the State ever did. In delving into certain areas of civil rights, the Committee would find it hard to agree. Some felt that incest, which was illegal in most societies, was an impediment to marriage. Divorce was not accepted in all legal systems. The Covenant referred not to divorce but only to a situation in which marriage was dissolved. He was not sure whether that involved discrimination. There was a link between the four paragraphs of article 23, but it was a tenuous one. He thought that a summary statement of the views expressed in the Committee could provide the basis for a revised general comment.

75. The CHAIRMAN said that the Committee would defer its discussion of article 23 so that the next Working Group could have more specific proposals available to it.

The meeting rose at 5.55 p.m.

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HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 957th MEETING

Held at Headquarters, New York,
on Thursday, 22 March 1990, at 11.30 a.m.

Chairman: Mr. LALLAH

CONTENTS

Organizational and other matters

Statement by the Under-Secretary-General for Human Rights

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The meeting was called to order at 11.30 a.m.

ORGANIZATIONAL AND OTHER MATTERS

Statement by the Under-Secretary-General for Human Rights

1. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the Committee could take satisfaction from the restoration of full funding by the General Assembly for their meetings during the current biennium. The Committee would also no doubt give careful consideration to ACABQ recommendations relating to cost-effectiveness when deciding on the venue of future sessions.

2. He was pleased to report that the Convention on the Rights of the Child and the Second Optional Protocol to the International Covenant on Civil and Political Rights had been adopted at the forty-fourth session of the General Assembly and had been opened for signature. More than 60 States, the largest number of signatures ever recorded at a ceremony involving a human rights instrument, had signed the Convention on the Rights of the Child in January 1990. To date, the Convention had been signed by 75 States and ratified by 2, and the 20 ratifications required to bring the Convention into force were expected within about a year. The Optional Protocol aiming at the abolition of the death penalty had been signed by 14 States, and ratification by at least 10 States would be required for its entry into force.

3. Among the several human rights-related resolutions adopted at the forty-fourth session of the General Assembly, he drew attention to resolution 44/135, dealing with the effective implementation of human rights instruments. Treaty bodies had been invited to identify possible technical assistance projects during the regular course of reviewing the periodic reports of States parties.

4. The General Assembly had also requested the Secretary-General to seek views regarding the convening of a world conference on human rights for the purpose of dealing at the highest level with the crucial questions facing the United Nations in connection with the promotion and protection of human rights. Such a conference would provide the international community with a timely opportunity for taking stock of achievements and of the evolution that had occurred over the past 25 years, for examining the potential for further important advances and for a review of the effectiveness of existing human rights machinery.

5. The international climate continued to favour progress in human rights. Recent dramatic improvements, including the promising détente between the Soviet Union and the United States, elections in a number of countries in South and Central America, Namibian independence, the release of Nelson Mandela and political developments in Eastern Europe, held out the prospect of a much more stable and peaceful equilibrium in international relations. Such favourable opportunities for further human rights progress must be fully taken advantage of in the coming months and years.

(Mr. Martenson)

6. At its forty-fourth session, the General Assembly had referred the expert study on enhancing the effectiveness of existing and prospective human rights treaty bodies (A/44/668) to the Commission on Human Rights, which, in turn, had referred it to the various treaty bodies for review and comments. That study would be under consideration by the Committee at the current session. The Commission on Human Rights had also approved the recommendations of the Task Force on computerizing the reporting to treaty monitoring bodies, had called upon States to make generous voluntary contributions for initial costs of the proposed system, and had strongly recommended approval from the Economic and Social Council and the General Assembly for the annual costs of the system as of the 1992-1993 biennium.

7. The Committee against Torture, at its third session held at Geneva in November 1989, had considered initial reports submitted by 11 States parties to the Convention, and following a discussion of various organizational matters, had also revised its general guidelines for the submission of initial reports. A highlight of the fourth session of the Committee on Economic, Social and Cultural Rights, had been a general discussion emphasizing the right to housing, among the rights guaranteed under article 11 of the Covenant relating to those rights. Independent experts on housing had been invited to participate. It also found revision of general reporting guidelines very important, and had considered a draft proposal on that question. The Economic and Social Council, at its first regular session, would review the composition, organization and administrative arrangements of the Committee on Economic, Social and Cultural Rights and would take action on the provisional rules of procedure and on the timing of meetings of its pre-sessional working group.

8. Unfortunately, the scheduled spring session of the Committee on the Elimination of Racial Discrimination had once again been cancelled due to lack of funds. However, at its recent session, the Commission on Human Rights had recommended that the States parties to the Convention create a "contingency reserve fund" from which resources could be advanced to finance spring meetings in the future.

9. The CHAIRMAN expressed appreciation for the understanding shown by the General Assembly in restoring funds to allow the Committee to effectively fulfil its mandate. The work-load had become much heavier in recent years, and there was a backlog of reports and communications. Thus, the timing for consideration of the study on cost-effectiveness was appropriate and the issue would be seriously addressed.

The meeting rose at 12.15 p.m.

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HUMAN RIGHTS COMMITTEE

Thirty-eighth session

SUMMARY RECORD OF THE 958th MEETING

Held at Headquarters, New York,
on Thursday, 22 March 1990, at 3 p.m.

Chairman: Mr. LALLAH

later: Mr. DIMITRIJEVIĆ

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Costa Rica

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Costa Rica (CCPR/C/37/Add.10)

1. At the invitation of the Chairman, Mr. Gutíerrez, Mrs. Castro de Barish, Mr. Rhenán Segura and Mrs. Mora (Costa Rica) took places at the Committee table.

2. Mr. GUTIERREZ (Costa Rica), introducing the report, said that he wished to draw the Committee's attention to certain developments which had occurred since the drafting of his country's second periodic report. Article 48 of the Political Constitution has been revised to read: "Every individual has the right to the remedy of habeas corpus to guarantee his personal freedom and integrity, and to the remedy of amparo to maintain or restore the enjoyment of the other rights enshrined in the Constitution, as well as those fundamental rights established in the international human rights instruments applicable in the Republic. Both remedies shall be within the competence of the court referred to in article 10". Article 10 of the Political Constitution had also been revised to establish a Constitutional Court, consisting of seven judges, as part of the Supreme Court of Justice, and with competence to deal with cases of unconstitutionality and the remedies of habeas corpus and amparo. Those reforms had ended the controversy as to whether internal or international law had priority in the area of human rights. The difference between human rights enshrined in the Political Constitution and human rights enshrined in international instruments had been eliminated since they were all dealt with by the same authority, which meant that human rights instruments had equal rank with constitutional norms.

3. Additional laws had been enacted to guarantee in practice the human rights enshrined in the Political Constitution and those enshrined in applicable international law. The right of amparo could be exercised not only against State authorities but also against private individuals acting in an official capacity or exercising power against which normal remedies were inadequate for guaranteeing fundamental rights and freedoms. The judgement rendered when such a right had been exercised could not be appealed.

4. A law had also been enacted making equality of rights between men and women an obligation of the State, with reference to the United Nations Convention on the Elimination of All Forms of Discrimination against Women. The law stipulated specific measures to ensure its implementation in practice.

5. An Office for the Protection of Human Rights had been established; its tasks included protection of the rights of women and reform of the labour, family and civil codes as well as of criminal procedures, with a view to strengthening real equality and eliminating social discrimination.

(Mr. Gutiérrez, Costa Rica)

6. In February 1990 Costa Rica had held free elections for the twelfth time since 1948. All of those elections had been democratic and uncontested and had resulted in a peaceful transfer of power from one Government to another. The elections of February 1990 had been no exception. His Government welcomed the increasing acceptance in various parts of the world of article 25 of the International Covenant on Civil and Political Rights, and he drew particular attention in that connection to developments in Namibia, Eastern Europe and Latin America.

Constitutional and legal framework within which the Covenant is implemented (articles 2 (2) and (3) (section I of the list of issues))

7. The CHAIRMAN read out section I of the list of issues concerning the second periodic report of Costa Rica, namely: (a) actual cases, if any, where provisions of the Covenant were directly invoked before the courts and relevant examples; (b) whether any persons who committed indictable offences against the human rights established in treaties ratified by Costa Rica had been punished under article 7 of the Penal Code; (c) information concerning the composition and operation of the Supreme Electoral Tribunal and whether any functions not related to suffrage had been assigned to it; (d) factors and difficulties, if any, affecting the implementation of the Covenant; (e) information on activities relating to the promotion of greater public awareness of the provisions of the Covenant and the Optional Protocol; and (f) the extent to which the public had been made aware of the examination of the report by the Human Rights Committee.

8. Mr. GUTIERREZ (Costa Rica), referring to section I (a), said he knew of two cases, involving the right of amparo and the detention or expulsion of foreigners, which had been referred to the Inter-American Court of Human Rights. There was no basis in Costa Rican law for the preventive administrative detention or expulsion of foreigners, and the Constitutional Council could accept habeas corpus appeals. The Penal Code provided that appeal could not be made to the Court of Cassation against a sentence of less than six months. A bill was pending, however, to ensure the right of appeal to everyone. The Constitutional Council had released six convicted individuals because their sentence had violated the American Convention on Human Rights. In doing so, the Council had done its duty to ensure respect for the Constitution and the relevant covenants.

9. Turning to section I (b), he said that in looking through the index he could find no such case. Referring to section I (c), he drew attention to articles 99-104 of Costa Rica's Constitution.

10. It followed from the functions assigned to the Supreme Electoral Tribunal that it would also be the supreme authority not only on electoral matters but on nationality or the loss of it.

11. The only difficulties affecting the implementation of the Covenant had arisen some decades earlier in connection with interpretations made by courts; since the establishment of the Constitutional Tribunal there had been none.

(Mr. Gutiérrez, Costa Rica)

12. As part of the activities relating to promotion of greater public awareness of the Covenant, courses on constitutional law had been expanded to include study of the Covenant; secondary school curricula also included references to the Covenants. In addition, the Inter-American Institute for Human Rights, which was located in Costa Rica, gave a yearly course on both the Inter-American and United Nations Covenants, and the Office of Human Rights of the Ministry of External Relations convened all concerned Costa Rican non-governmental organizations to help in the preparation of Costa Rica's report to the Committee.

13. In order to make the public aware of the examination of the report by the Committee, the press section of the Ministry for External Relations had reported to the media the previous week on the Committee's forthcoming meeting.

14. Mr. PRADO VALLEJO observed that there were obviously no major human rights problems in Costa Rica. While the human rights situation was not perfect in any country, Costa Rica was a country in which human rights were to a large extent safeguarded. It was especially satisfying to note that the Covenants had been given equal standing with the constitution in Costa Rica.

15. Turning to section I of the list of issues, he asked whether the social and political crisis in Central America had affected human rights in Costa Rica, for example, in connection with the refugees and foreigners who had fled the crisis and were living there. In connection with paragraph 9 of the report, he wondered whether foreigners who were children of naturalized Costa Ricans enjoyed the right to operate mass media and advertising agencies, and whether there were any restrictions on the right of foreigners to write and express their opinion freely. In connection with paragraph 17 of the report, he asked how the family was defined under Costa Rica's Family Code. With reference to paragraph 21, he asked for further information on the scope of the bill concerning effective equality for women currently under study.

16. Noting that the Roman Catholic Church had been declared the religion of the State, he asked what privileges were accorded the Catholic Church under that provision and how it could be said to be compatible with the Covenant.

17. Mr. WAKO said it was clear that the human rights situation in Costa Rica was relatively good. In connection with section I of the list of issues, he asked whether the Supreme Electoral Tribunal had the power to declare an election invalid and what appeal was possible from its decisions. Noting the efforts being made to improve the status of women, he asked for more information on the actual status of women in Costa Rican life, including education, government and the judiciary.

18. Mr. COORAY, noting the report's statement that the Covenant prevailed over ordinary law, asked whether there had been any cases involving a decision as to precedence between the Constitution as supreme law and the Covenant. In connection with questions I (e) and (f), he asked for additional information on human rights education in Costa Rica and the dissemination of information on the Covenant among courts and judges.

19. More generally, he asked whether Costa Rica had anything similar to the administrative remedies for abuse of power by administrative authorities that was found in common law countries.

20. Mr. MAVROMMATIS noted that Costa Rica was devoted to furthering human rights not only at home but throughout its region. In connection with the Costa Rican representative's statements concerning the extension of habeas corpus to persons sentenced to less than six months imprisonment, he asked whether there would be a similar right of appeal with respect to such sentences if they involved lesser punishments than the restriction of freedom. In connection with question I (d), he asked how Costa Rica dealt with difficulties arising with respect to the implementation of human rights.

21. Mr. MYULLERSON, observing that Costa Rica was notable for its concern for human rights and for its outstanding contributions to peace and to the world community of jurists, asked for clarification of the reference in article 91 of the Constitution to the suspension of the exercise of political rights.

22. Mr. Dimitrijević, Vice Chairman, took the Chair.

23. Mr. POCAR observed that the recent revision of articles 48 and 10 of the Constitution was further proof that Costa Rica was striving to better its already excellent human rights record. He would like more information on how the Constitutional Tribunal newly established under article 48 proceeded in ruling on the unconstitutionality of a domestic law. He assumed that by virtue of article 48, which had put international treaties on a par with the Constitution, the Tribunal could nullify any Costa Rican law that was incompatible with an international norm. If that was indeed so, could a case against a particular law be initiated by individuals or only by other organs, and must the law be challenged as part of an amparo or a habeas corpus action?

24. He was confident that any lacunae in the Constitution could be remedied by the inclusion of international human rights norms, for he felt that there was no real contradiction between the two.

25. Mr. GUTIERREZ (Costa Rica), responding to the questions raised under section I of the list of issues, said that the Central American human rights crisis had indeed affected Costa Rica because of the enormous influx of refugees. Before 1978 the refugees had come mainly from El Salvador; after 1978 they had been Nicaraguan. The official figures from 1978 to 1988 showed that approximately 41,000 refugees had entered Costa Rica during that period, but that included only the refugees who had officially registered with the Office of the United Nations High Commissioner for Refugees. Those figures were thought to represent only 10 to 20 per cent of the true numbers: in other words, Costa Rica with a total population of 2.5 million, was dealing with an influx of from 300,000 to a half million refugees. That was a very grave situation that affected the living conditions of the refugees and depressed the domestic labour market. Hence, one of his Government's first reactions after the recent election in Nicaragua had been to

(Mr. Gutiérrez, Costa Rica)

declare that, since the reasons for which Nicaraguans had been fleeing their country had now been eliminated, Costa Rica would thenceforth refuse to accept any more Nicaraguan refugees.

26. The media legislation referred to in paragraph 9 of the report had been passed because certain United States television networks had begun to buy space on the nascent Costa Rican television, which, as a public medium, had to remain Costa Rican. Since the only restrictions on foreigners under article 19 of the Constitution were political, legislation had to be passed limiting the ownership of television channels to citizens by birth or naturalization. It should be noted that the legislation in question limited ownership but did not limit anyone's freedom of expression, which was ensured under articles 28 and 29 of the Constitution, and ensured without exception.

27. The equality of the sexes under article 3 of the Covenant was governed by articles 33 and 52 of the Constitution. The Family Code referred to in the report (paras. 17-18) regulated family relations and the problems resulting from the dissolution of a family. In Costa Rica, the family was conceived of as the nuclear family, not the extended family, and involved relations between spouses and between parents and children. Originally, following the French model, Costa Rica had regulated family matters in the Civil Code. A special commission to revise Book I of the Civil Code on the family had decided instead to promulgate entirely new legislation with emphasis on the equality of the spouses and the protection of the children under all circumstances; that had led, in 1973, to the establishment of the Family Code and the Family Courts. The bill referred to in paragraph 21 of the report had, on 8 March 1990, become law, the Ley de Igualdad Real (Real Equality Act) establishing for the specific protection of women, children and consumers a General Office for the Protection of Human Rights that incorporated the former Office of the Public Attorney for Human Rights and Office of the Public Attorney for Consumer Rights. Within this General Office, the Office for the Protection of Women's Rights had the following functions: to ensure the observance of all women's-rights legislation and ordinances; to take measures or make recommendations for the prevention or for the investigation and punishment of violations of women's rights; to propose amendments to women's rights legislation; to improve public services for women; to intervene in court proceedings on sex-based discrimination; to actively defend women's rights before government bodies; to lobby for the ratification of international instruments protecting women's rights; to act as watchdog regarding sex-based discrimination in public and private institutions; to study the causes of inequality between the sexes. It should be noted that the idea behind the establishment of the new General Office for the Protection of Human Rights was not to create an imbalance in favour of women but to safeguard the equal rights of both sexes.

28. Provisions similar to article 76 of the Constitution granting special privileges to the Roman Catholic Church had traditionally been a part of all Costa Rican constitutions. In practice, this meant that the foreign ministry was known as the Ministry of Foreign Affairs and Worship, because it governed all relations with the Church; that the Church did receive a small subsidy from the Government;

(Mr. Gutiérrez, Costa Rica)

and that a Catholic religion course was taught in all public schools as well as in the Catholic schools There were, however, no provisions prohibiting the exercise of any other religion. Other religions were required to register with the Government, the point being that they were then entitled to receive benefits in order to build churches and establish schools. There were two Protestant seminaries in the country and an excellent Protestant Centre for the Teaching of Spanish, intended for missionaries. Any pupil could be exempted, upon request from attending the Catholic religion courses in the public schools. In practice, therefore, the undeniable privileges of the Roman Catholic Church under the law were counterbalanced.

29. The Supreme Electoral Tribunal, established under articles 99 ff. of the Constitution, had the same rank as the executive, legislative and judicial branches. Its pronouncements were the last word on electoral matters - as indicated in article 103 of the Constitution - and could not be reversed by the Supreme Court of Justice. In theory, the Supreme Electoral Tribunal could declare an election invalid, but since the preparation and supervision of elections was one of its administrative functions, that had never happened in practice. There had never been a case in which the Tribunal's judgements had been challenged.

30. With regard to the status of women, he referred to a report published by the National Centre for Women and the Family, which contained a table that showed clearly that men far outnumbered women in the work force. In 1985, men accounted for 70 per cent of all industrial workers, 68 per cent of all construction workers, 94 per cent of those providing basic services and 66 per cent of those engaged in trade. In other words, women accounted for about 20 per cent of the economically active population in Costa Rica. The situation was, as yet, far from ideal, however, women had been making rapid progress in recent years.

31. The rate of illiteracy in Costa Rica was very low. In 1973, 14 per cent of the population had been illiterate, while in 1984 that figure had dropped to 7 per cent. In 1973, 4 per cent of men living in urban areas were illiterate, as opposed to 6 per cent of women; in 1984, those figures had decreased to 2.7 per cent and 3.5 per cent, respectively. The corresponding figures for rural areas in 1984 had been 10.3 per cent and 10 per cent. Thus, the rate of illiteracy for women was lower than it was for men.

32. While women had been participating more actively in government, their numbers remained relatively low. In 1953, women had held 7 out of 234 government posts; in 1986, women had held 30 out of 379 posts. In the current Legislative Assembly, there were six women out of a total of 57 deputies.

33. Female suffrage had been established in 1948. There was little difference between the numbers of boys and girls attending elementary school, high school or university.

(Mr. Gutiérrez, Costa Rica)

34. With regard to Mr. Cooray's question regarding difficulties in interpreting the Covenant in Costa Rica, he said that, Article 7 of the Political Constitution stated that international conventions approved by the Legislative Assembly would prevail over the law. On 22 May 1986, meeting in special session, the Supreme Court had ruled that, in cases of a contradiction between a treaty and the law, the treaty always prevailed, since it had higher authority than the law. Even if a law was subsequent to a treaty, the treaty prevailed, as had been confirmed by a recent reform of article 2 of the Civil Code. As far as human rights legislation was concerned, the court of the first instance had ruled that the remedy of amparo referred to the protection of rights guaranteed by the Constitution. However, the current reform placed international treaties on an equal footing with the Constitution.

35. Mr. Pocar had asked whether there could be a contradiction between the Constitution and the Covenant. While such a contradiction was difficult to imagine, priority would be given to the Constitution.

36. Mr. Cooray had asked whether the fundamental rights contained in the Costa Rican Constitution and in international human rights instruments were taken into account in the Costa Rican educational system. Instruction about such rights was provided in the Costa Rican school system and in the Institute of Human Rights in Costa Rica.

37. Article 49 of the Constitution stated that an administrative litigation jurisdiction was established as a function of the judicial branch for the purpose of protecting anyone in the exercise of his administrative rights when those rights were violated by definite measures of any kind taken by the executive branch or its agents, by the municipalities or any autonomous or semi-autonomous institutions of the State. The administrative litigation tribunals were not administrative tribunals in the sense that they depended on administration; they were a means of supervising the administration. Under the Costa Rican system, all courts were subordinate to the Supreme Court of Justice. That meant that action against the laws, regulations and acts of the administration was brought before the administrative litigation tribunals. The Costa Rican system was very different from the common law system, and Costa Rica did not have the mandamus institution. Under the administrative litigation system, it was possible for tribunals to suspend the execution of administrative acts until the tribunal passed judgement on the facts.

38. Mr. Mavrommatis had asked about appeals in cases of short-term sentences. At the beginning of the 1970s, Costa Rican legislation had been changed in order to speed up the process of bringing criminal cases to trial. That change had included the elimination of appeals in criminal courts, leaving the remedy of cassation, which was confined to sentences exceeding six months. As a result, Costa Rica had been found to be in contradiction with article 14, paragraph 5, of the Covenant. About four years earlier, the Inter-American Commission on Human Rights had pointed out that the Costa Rican reform was in violation of the Covenant, and a court of

(Mr. Gutiérrez, Costa Rica)

cassation had been established to reduce short-term sentences. That reform had not been accepted by the Legislative Assembly, and that was why Costa Rica had not met the deadline set by the Inter-American Commission. However, the matter was still under consideration, and Costa Rica had accepted the comments made by international human rights organizations.

39. Replying to Mr. Myullerson, he said that the suspension of political rights mentioned in the Constitution referred to the exercise of the right to vote. Under the Penal Code, there were certain offences for which the right to vote and to stand for election could be suspended. There was no way that a Costa Rican could be declared stateless. Article 32 of the Constitution stated that no Costa Rican could be compelled to abandon the national territory. Moreover, Costa Rican courts had ruled that nationality was lost only when a national adopted another nationality or when a naturalized Costa Rican left the country for over six years. Since the adoption of another nationality was required before the loss of Costa Rican nationality, there could be no question of statelessness.

State of emergency (article 4 of the Covenant) (section II of the list of issues)

40. The CHAIRMAN read out section II of the list of issues concerning the initial report of Costa Rica, namely: legal provisions relating to the introduction of a public emergency and comments on the conformity of such provisions with article 4 (2) of the Covenant.

41. Mr. GUTIERREZ said that the Costa Rican Constitution had two provisions regarding the suspension of rights. Article 121, paragraph 7, empowered the Legislative Assembly to suspend the rights and guarantees conferred by articles 22, 23, 24, 26, 28, 29, 30 and 37 of the Constitution. The executive branch could order such a suspension for 48 hours when the Legislative Assembly was in recess. If the executive branch ordered a suspension of rights, the Legislative Assembly must convene within the following 48 hours, and the suspension must be approved by a vote of not less than two thirds of the members of the Assembly. The suspension of rights was valid only for a 30-day period, after which the Legislative Assembly must meet again to review the situation. The right contained in article 21 of the Constitution, regarding the inviolability of human rights, and the right contained in article 33, regarding the equality of all persons before the law, could not be suspended. The last time a suspension of rights had taken place had been in 1955, and that suspension had lasted for a single 30-day period.

Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant) (section III of the list of issues)

42. The CHAIRMAN read out section III of the list of issues concerning the second periodic report of Costa Rica, namely: (a) the main inequalities between men and women in respect of the enjoyment of political, economic, social and cultural rights, and the current status of the Bill which sought to remove or reduce such inequality; (b) the question of empowering the office, mentioned in paragraph 21 of the report, which was established to defend equal rights for the sexes to inquire

(The Chairman)

into and grant relief in cases of discrimination brought before it; (c) statistical data on women's participation in the political, economic, social and cultural life of the country, and the proportion of the sexes in schools and universities; (d) additional information on the work and functions of the National Centre for Women and the Family, and on the possible completion and results of the Centre's review of the Family, Penal and Labour Codes; and (e) information on the treatment of aliens, with a description of the ways in which the rights of aliens were restricted as compared with those of citizens.

43. Mr. GUTIERREZ said that he had already answered most of the questions in section III. With respect to section III (d), he said that the National Centre for Women and the Family had completed its review of the Family, Penal and Labour Codes but that it was still too early to speak of results. In referring to section III (e), he said that, under Costa Rican law, aliens could be detained prior to their expulsion. That practice had been contested by the Constitutional Tribunal. Aliens in Costa Rica enjoyed civil rights but not political rights, and therefore did not have the right to vote. Under Costa Rican law, the expulsion of aliens must proceed in the courts in accordance with the rules of due process.

44. Mr. ANDO asked whether, in Costa Rica, naturalized parents had equal rights in transferring nationality to their children.

45. Mr. GUTIERREZ said that, like other Latin American countries, Costa Rica followed the theory of jus soli and not jus sanguinis. Citizens of Costa Rica included those who had been born in Costa Rica and those who had been naturalized in Costa Rica after meeting the residency requirement. When Costa Rica granted citizenship to parents, the parents could request that citizenship be extended to their minor children. Upon coming of age, those children could renounce their Costa Rican citizenship.

The meeting rose at 5.55 p.m.

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Thirty-eighth session

SUMMARY RECORD OF THE 959th MEETING

Held at Headquarters, New York,
on Friday, 23 March 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Costa Rica (continued)

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Costa Rica (continued) (CCPR/C/37/Add.10)

1. At the invitation of the Chairman, Mr. Gutierrez (Costa Rica) took a place at the Committee table.

Right to life (art. 6 of the Covenant) (sect. IV of the list of issues)

2. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of Costa Rica; they were the following: (a) plans for early ratification by Costa Rica of the Second Optional Protocol to the Covenant aiming at the abolition of the death penalty; (b) rules and regulations governing the use of firearms by the police; any violations of those rules and regulations and, if so, measures taken to prevent their reccurrence; (c) measures taken by the Government in the field of health care, particularly with a view to reducing infant mortality.

3. Mr. GUTIERREZ (Costa Rica), referring to section IV (a), said that his country had abolished the death penalty in 1882. Although the question had come up before the Legislative Assembly, there was no strong movement in favour of ratifying the Second Optional Protocol. Although there was no opposition to ratification, it would take some time before it came about. With regard to section IV (b), he said that the regulations governing the use of firearms by the police were the same as those for all citizens in the country. In general, firearms could be used only in cases of self-defence. A recent study on violent death and police intervention had shown that there had been a significant decrease in the total number of deaths resulting from police intervention during the 1980s. The percentage of homicides successfully investigated by the police was higher than 90 per cent. Between 1982 and 1986, there had been a marked decrease in the number of civilians killed by the police. In general, the use of firearms by the police in Costa Rica did not constitute a problem.

4. Referring to section IV (c), he said that the quality of health care in Costa Rica was comparable to that in some developed countries. The average life span was 74 years. The infant mortality rate was 17 per thousand inhabitants, which was considered low.

5. Mr. PRADO VALLEJO wished to know whether there had been problems arising from confrontation between the police and the large number of refugees in Costa Rica. The reporting State should provide information on complaints of mistreatment or torture of refugees by the police.

6. Mr. DIMITRIJEVIĆ inquired whether there was an anti-abortion movement in Costa Rica and if abortion was generally permitted. It would be interesting to know at what point human life was thought to begin under Costa Rican law.

7. Mr. GUTIERREZ said that he did not know of any incidents involving confrontation between the police and refugee groups in Costa Rica. In general, there were two groups of refugees in the country: official refugees under the protection of the Office of the United Nations High Commissioner for Refugees (UNHCR) and illegal immigrants. UNHCR had been active in Costa Rica for more than a decade and if there had been many cases of mistreatment or torture of refugees by the police they would have been promptly reported.

8. Under Costa Rican law, human life began at conception. Abortion was permitted only for medical reasons. Costa Rica was a very Catholic country and the local movement to legalize abortion had not been strong enough to bring about changes in the legislation. On the other hand, all birth control methods were generally available. Both the Ministry of Health and the Costa Rican Social Security Fund distributed information on birth control and birth control devices. Since 1971 Costa Rica's birth rate had markedly decreased. The birth rate of 4.8 registered in 1970 had been reduced to the current level of 2.9.

Liberty and security of the person and treatment of prisoners and other detainees (arts. 7, 9 and 10 of the Covenant) (sects. V of the list of issues)

9. The CHAIRMAN read out section V of the list of issues concerning the second periodic report of Costa Rica, as follows:

(a) Sanctions and remedies provided under the law against torture or cruel, inhuman or degrading treatment;

(b) How soon after arrest a person could contact a lawyer and how soon his family was notified of the arrest;

(c) The average period of pre-trial detention;

(d) The outcome of efforts to amend article 108 of the Penal Code, as referred to in paragraph 27 of the report;

(e) Information on detention in institutions other than prisons and for reasons unconnected with the commission of a crime (for example, in psychiatric institutions); and

(f) Information on the arrangements for the supervision of prisons and other places of detention and for receiving and investigating complaints; the role of the Human Rights Council for Prisoners in that regard and the present status of the draft Prison Code mentioned in paragraph 36 of the report.

10. Mr. GUTIERREZ (Costa Rica), referring to section V (a), said that article 40 of the Political Constitution provided that no one could be subjected to cruel or degrading treatment or to life imprisonment, or to the penalty of confiscation, and that any statement obtained by means of force was null and void. Under a decision by the Supreme Court in 1980, the refusal of the authorities to inform the wife of the place where her husband was detained and to permit her to see him was

(Mr. Gutierrez, Costa Rica)

inadmissible under article 40 of the Constitution. The Judicial Investigation Board (Organismo de Investigación Judicial) had taken measures to guarantee that any person kept in a detention centre for the duration of an investigation was given a medical examination. The Ministry of Justice also ensured that medical examinations were provided in the prisons under its administration. As a result of complaints in 1982 of alleged mistreatment of detainees accused of terrorism, the Judicial Investigation Board and prison authorities had instituted a general system of medical care to safeguard the health of prisoners.

11. With regard to section V (b), he pointed out that under Costa Rican law a person could contact his lawyer immediately after arrest and was usually given immediate access to a telephone to contact his family. The judicial authorities must be informed of all police arrests within 24 hours. A person could be held incommunicado for a maximum of 10 days if it was so decided by the judicial authorities. Referring to section V (c), he said that in 1989, 38 per cent of the prisoners were awaiting trial. Although that figure represented a marked decrease from several years earlier, it was still unsatisfactory. With regard to section V (d) he pointed out that article 108 of the Penal Code had not yet been amended because the matter was still under consideration.

12. In connection with section V (e), he said that there had been no cases of detention in psychiatric institutions in Costa Rica. All persons arrested were transferred from police custody to the detention centres and prisons administered by the Ministry of Justice. There was a section for prisoners with psychiatric problems in the main penitentiary in Costa Rica. Confinement in a psychiatric institution required medical certification that the person concerned was mentally unbalanced.

13. Turning to section V (f), he said that a recent study indicated that the danger of homicide was 23 times greater for the prison population than the population at large. The prison population had grown from 2,308 in 1979 to 3,918 in 1988, representing an increase of 70 per cent. It had been calculated that the number of prisoners exceeded the capacity of the prison system by 23 per cent. That was clearly an unsatisfactory situation. The task of the Human Rights Counsel for Prisoners was to ensure that the human rights of prisoners were not violated. The draft Prison Code had not yet been adopted by the Legislative Assembly.

14. Mr. FODOR said he noted that article 108 of the Penal Code of Costa Rica, as quoted in paragraph 27 of the report, envisaged the possibility of pre-trial detention for more than one year. In light of the provision of article 9 (3) of the Covenant, relating to a detained person's right to a prompt trial, he would like to know if there were legal provisions limiting the duration of pre-trial detention. Likewise, it would be useful to know what was the situation with regard to the right to bail, when bail could be denied, under the law, and what was the judicial practice in that regard. Did foreigners have the same rights as nationals? Under what circumstances could a person be held incommunicado for more than 48 hours?

15. Mrs. HIGGINS said she too was concerned with the first question raised by Mr. Fodor, regarding the one year period of pre-trial detention. More information would be useful on the criteria for determining the maximum period of pre-trial detention. She hoped it was not determined in relation to the length of a possible sentence, for that would not be appropriate because accused persons were presumed innocent until proven guilty.

16. She found it hard to understand the provision quoted in article 27 of the report. She wondered whether malicious motive always generated the liability for civil reparation mentioned in article 108 of the Penal Code, and whether malicious motive always had to be demonstrated. She did not understand why the accused, having been found innocent after the case was appealed, appeared not to be entitled to reparation except if he/she had been in pre-trial detention for more than one year.

17. Mr. WENNERGREN asked for further information regarding corporal punishment, not only in prisons but in schools and other institutions. He was also concerned about subjecting individuals to medical or scientific experimentation, which under article 7 of the Covenant should not be carried out without their consent. The initial report submitted by Costa Rica had referred to an article of its Penal Code which prohibited the infliction of wounds unless the procedure would benefit the health of others. There were certain kinds of scientific and medical experimentation which did not inflict wounds, such as those carried out to test drugs. He would like to know what provisions were envisaged in Costa Rican law to protect people against that type of experimentation.

18. He noted that under article 37 of the Costa Rican Constitution no one could be detained without substantiated evidence of having committed an offence or without a written order from the judge or authority charged with the maintenance of public order. He wondered whether such a written order was issued by the Chief of Police. Article 37 of the Constitution further provided that anyone who was detained had to be placed at the disposition of a competent court within a peremptory period of 24 hours. It would be useful to have more information on the number of hours detainees were usually held. Presumably, if they were released before the 24-hour period had elapsed, there would be no judicial control over the situation.

19. Mr. MYULLERSON said he would appreciate further information about paragraph 38 of the Costa Rican report, according to which there was provision for civil imprisonment for failure to comply with alimony obligations.

20. Mr. GUTIERREZ (Costa Rica) replying to questions regarding article 108 of the Penal Code, on slanderous complaints or accusations, said that the article envisaged different situations which should be considered separately, namely, cases of civil reparation for slanderous accusations or complaints, and the secondary liability of the State and of private accusers or complainants, in cases where there had been an appeal for review, where the accused had been found innocent, or where he had been acquitted after having been in pre-trial detention for more than one year. In addition, there might be cases where judicial and administrative

(Mr. Gutierrez, Costa Rica)

authorities had extended the term of imprisonment after the completion of the sentence. The requirement that the accusation or complaint should be slanderous referred only to the accusers or complainants. The provisions regarding other persons who might have liability were clearly differentiated in the article.

21. Article 37 of the Constitution stipulated that no one could be detained without substantiated evidence of having committed an offence or without a written order from the judge or authority charged with the maintenance of public order, unless the person concerned was a fugitive from justice or was caught in the act; but in all cases he must be placed at the disposition of a competent court within a peremptory period of 24 hours. Therefore, any detention which exceeded 24 hours gave rise to an appeal of habeas corpus.

22. In Costa Rica, habeas corpus referred not only to the requirement that a detained person should be presented to a judicial authority, but also involved an examination of the legality of the arrest order itself. The Constitutional Court, which had jurisdiction in cases of habeas corpus appeals, reviewed the situation of the detained person as well as the law or the grounds for the detention, regardless of whether the detention had been ordered by an administrative or a judicial authority. In several cases in the past, the courts had stated that any provision which curtailed personal liberty must be applied restrictively. Moreover, in a recent case, to cite one example, the court had stated that aliens enjoyed a fundamental right of equality and that no exceptions were allowed to that right other than those normally associated with nationality. Thus, no distinction was made between nationals and aliens. The Code of Criminal Procedures provided that personal liberty could only be restricted as absolutely necessary to guarantee the discovery of the truth and the application of the law. Arrests and detentions must be executed in such a way as to cause the least possible harm to the person or reputation of the individuals affected. The Code further provided that judges must provide accused persons with detailed information regarding the charges against them and the evidence obtained, and must inform them that they had a right to abstain from making a declaration and that their silence did not imply any presumption of guilt. Detainees were also allowed to request the presence of their defence attorneys.

23. The holding of detained persons incommunicado was governed by article 44 of the Constitution, according to which a court order was necessary for a person to be held incommunicado for more than 48 hours. It might be extended only for 10 consecutive days, and in no case could it prevent judicial investigation. Moreover, the order to hold a person incommunicado must be based on grounds that it was required to complete the investigation.

24. Referring to the question regarding extended periods of pre-trial detention, he explained that Costa Rican law provided for a bail system, but that the judge was authorized to deny bail if the release of the detained person would jeopardize the investigation or if an early release might provoke negative reactions on the part of the parties concerned. There had been one case in which certain persons who had been accused of embezzlement against the State had been held prisoner for

(Mr. Gutierrez, Costa Rica)

three years because of the complexity of the case and the time required to prepare the briefs. That, however, was an exceptional case. In most cases, bail was granted.

25. On the question regarding corporal punishment, he said that under article 40 of the Constitution, no one could be subjected to cruel or degrading treatment or to life imprisonment or to the penalty of confiscation. Any statement obtained by means of force was null and void. That referred to any type of corporal punishment. Scientific or medical testing of prisoners without their consent was not allowed. The protection for any possible violation of that provision was the appeal of amparo and habeas corpus. The Human Rights Counsel for Prisoners could act in such cases.

26. Referring to another question relating to article 37 of the Constitution, he said that anyone who was detained for more than 24 hours without a written order could present an appeal of habeas corpus. The habeas corpus procedure had existed in Costa Rica for more than 100 years; it had been established in the Constitution in 1865 and had been duly regulated by law since 1902. Therefore, there was no authority who was not aware of that recourse.

27. Turning to the questions relating to articles 38 and 39 of the Constitution, prohibiting imprisonment for debt and possible judicial compulsion in civil or labour matters or detentions ordered in cases of insolvency, bankruptcy or receivership, he explained that civil imprisonment did exist for failure to pay alimony or support for an ex-spouse or offspring. All other forms of civil imprisonment had been derogated under the Constitutional Jurisdiction Act of 1989.

28. Mr. WENNERGREN said that his question regarding scientific experimentation had been intended to refer to everyone, not only prisoners. In particular, he had in mind patients in public hospitals, and was concerned that there were methods of experimentation which did not necessarily involve inflicting wounds. He would like to know whether the Penal Code provided any kind of protection against such procedures.

29. Mrs. HIGGINS said she would appreciate further clarification of the questions raised regarding article 108 of the Penal Code, which envisaged the holding of persons in pre-trial detention for a year. She understood that in some cases there might be reasons relating to the harm a person might do. However, in the three-year embezzlement case mentioned by the representative of Costa Rica, the question arose as to whether the period of pre-trial detention while awaiting trial was reasonable. That was different from the custody question envisaged in article 9 (3) of the Covenant, which specified that it should not be the general rule that persons awaiting trial should be detained in custody. Such custody would only be justified for such reasons as interference with evidence or the likelihood of absconding or of the accused doing harm to himself or to others. She hoped that the explanation given by the representative of Costa Rica did not mean that it would be lawful to hold a person in custody on grounds that it would take three years to prepare the trial.

(Mrs. Higgins)

30. Article 108 of the Penal Code was still puzzling to her, in that it appeared that there might be slanderous complaints that had nothing to do with the State. Clarification was needed as to whether the individual complainants or accusers might be the State officers or public authorities who initiated a trial, or whether they might be private persons. She did not understand in what circumstances private persons could bring complaints that would lead to criminal action. It would be useful to know whether the criteria given by the representative of Costa Rica were cumulative or alternative, and what might happen in a normal situation where the State itself brought a criminal action but it later turned out that the police or public authority which had started the action had done so out of a malicious motive. Would compensation be available in such cases? Would a person found innocent when there was not a malicious motive receive compensation if his pre-trial detention had exceeded one year?

31. Mr. MAVROMMATTIS asked for further clarification of paragraph 38 of the report regarding civil imprisonment for failure to comply with alimony obligations. He understood from the explanation given by the representative of Costa Rica that the provision also referred to child support. It would be helpful to have clarification as to whether that was a purely civil matter or whether it was also criminal not to support one's children; he would also like to know whether the measure applied to the support of parents as well.

32. Mr. GUTIERREZ (Costa Rica), in reply to a question from Mr. Wennergren, said that the General Law of Health prohibited scientific or medical experimentation of any type without the consent of the person concerned and also of those providing the treatment. Parents were expected to give consent for the treatment of minors, but the Director of a hospital could treat minors without parental consent if he felt it absolutely necessary.

33. With regard to Mrs. Higgins' question relating to article 9 (3) of the Covenant, the Code of Criminal Procedure contained a number of limitations and restrictions regulating indictment and preparation of cases. There were exceptions if a case was complex, but such exceptions must be reviewed by higher authority. One month was usually the maximum period for declaring grounds for proceeding to prosecution.

34. To elaborate further on article 108 of the Penal Code, he said that slanderous complainants or accusers were private persons. Criminal charges could be brought by private persons in a very limited number of cases. Most court actions were public by nature in Costa Rica and such charges were brought by the public ministry, but private actions could be brought in cases such as rape or defamation, where private interest took precedence, as such actions could proceed only when the victim wished to pursue them. The liability mentioned in article 108 applied to private persons, and that paragraph should be viewed as separate from the rest of the article. The liability both of the State and of private persons covered compensation to those wrongly accused. The charge of slander would not apply to a public official unless that official brought an action as a private person.

(Mr. Gutierrez, Costa Rica)

35. In response to Mr. Mavrommattis, he said that failure to comply with child support obligations was a punishable offence, and both civil and criminal actions were allowed. A civil suit for support was the usual procedure, though a criminal action was possible also. In practice, criminal intent must be demonstrated in order to bring such an action. Both types of action were used alternatively. The authorities could order detention if the person liable did not pay his obligations; that was the only exception to the prohibition of civil imprisonment.

36. The CHAIRMAN read out section VI of the list of issues concerning the second periodic report of Costa Rica, namely: (a) information on the current status and prospects for enactment of the Bill proposing establishment of a higher criminal court of cassation; (b) information concerning any free legal aid and advisory scheme and its operation; (c) whether judgements were always made public.

37. Mr. GUTIERREZ (Costa Rica), referring to section VI (a), said the issue had been addressed at the previous meeting in explanation of the circumstances behind the Bill and the decision to be taken. Regarding section VI (b), several entities provided free legal aid and advisory services. The most important was the Public Defender's Office, dealing with criminal proceedings, which offered free services to any defendant without sufficient means anywhere in Costa Rican territory. Other non-criminal bodies, such as the Ministry of Labour, offered counsel to any worker on labour-related issues. The "Patronato Nacional de la Infancia" offered free advice on matters relating to the family and the defence of mothers and children. University law schools also offered free advisory services as a degree requirement for their students.

38. Regarding item (c), in all criminal procedures, the judgement must be read out at the time of sentencing. Judgements of bodies of the Supreme Court were published in the daily press and in a yearly bound volume. There was no limitation on access by the press. In non-criminal cases the judgement was made available to the parties concerned in the case.

39. Ms. CHANET, referring to article 14 (5) of the Covenant, asked for more details on the proposed Court of Cassation in criminal matters referred to in paragraph 53 of the report. Courts of cassation usually examined the validity of the law and not guilt or innocence, and she wondered if the proposed court did not risk placing citizens in double jeopardy. She would also welcome further details on the budgetary and legal problems mentioned. Costa Rican legislation did not appear to conform to article 14 of the Covenant at present, and thus a reservation should perhaps have been made. With regard to the requirements for magistrates set forth in article 159 of the Constitution, she would welcome further details on the type of bond required.

40. Mr. PRADO VALLEJO said that article 48 of the Constitution placed the right of habeas corpus under the jurisdiction of the Supreme Court, which could determine whether to order the accused to appear. However, he understood habeas corpus to mean that the accused was produced. He wondered how habeas corpus would be processed without the appearance of the accused.

(Mr. Prado Vallejo)

41. He requested information on the existence of laws against terrorism and, if such laws existed, what procedures had been established for their application. If there were no such laws, he requested information on how the crime of terrorism was punished.

42. Mrs. HIGGINS wondered how the provision under the Penal Code allowing judges to impose security measures when a sentence had not led to rehabilitation could be made compatible with the Covenant. The initial report of Costa Rica had stated that legislation did not provide for interpreters in court, but that it was the practice to supply them. She wished to know if that practice had since become law.

43. Mr. MAVROMMATTIS asked whether any current or proposed legislation provided for review of a case by a higher court as required under article 14 (5) of the Covenant, if no sentence of imprisonment had been imposed, but only a fine. Referring to article 39 of the Constitution, he requested clarification of the difference between a crime, wrong or misdemeanor, and further explanation of judicial compulsion in civil or labour matters.

44. Mr. WAKO asked whether the services of the Public Defenders Office were provided to persons under arrest and in detention who had not yet appeared in court.

45. Mr. GUTIERREZ, in response to the question by Ms. Chanet, said that criminal cases incurring sentences under six months would be referred to the Court of Cassation. For cases with longer sentences, there was the possibility of review by the criminal chamber of the Supreme Court of Justice. The court reformers of 1972 had favoured cassation rather than an appeal process; hence, judgements of collegial tribunals could be reviewed only on grounds of violation of the law. However, through the remedy of cassation, Costa Rican law provided for the review of culpability as well.

46. Magistrates were required by law to post a bond, as it was possible to hold them liable for abuse of functions. They were obliged to post a bond as a guarantee in case the victim of such abuse might be awarded compensation.

47. In response to Mr. Prado Vallejo, he said that two types of habeas corpus were common in Latin America. In Costa Rica the English model was followed, where the detainee was brought before the authorities to avoid the possibility of "disappearances", and to examine the validity of detention. Habeas corpus applied to the guarantee of personal freedom and integrity now regulated under the Constitutional Jurisdiction Act.

48. Habeas corpus could be invoked in writing by anyone, not just the detainee and was given priority over all other matters before the court. A report on the question must be requested and issued within three days. If deportation proceedings had begun, a person could not be expelled from Costa Rica until the matter was resolved. If a detainee had been held without a written order, the authorities must procure such an order within 48 hours. The Court could order the appearance of the accused according to the circumstances. Current practices in

(Mr. Gutierrez, Costa Rica)

Costa Rica demonstrated little fear of the "disappearances" which had been a major factor in other countries of the region. If the requested report was not produced within the time limit, habeas corpus was immediately declared. The responsible authorities must pay compensation for any damages incurred.

49. Costa Rica had legal provisions under which terrorism was considered to be a crime. It had also signed and ratified a number of international agreements on terrorism. His country had no special courts or procedures for dealing with cases of terrorism. Such cases were tried in the criminal courts, where the same procedures as in other criminal cases applied.

50. The security measures provided for under the Code of Criminal Procedure involved "incorrigible offenders". Under the Costa Rican penal system, prison sentences were limited to a maximum of 25 years. The security measures in question had been designed for the purpose of extending that time period for certain offenders. Those measures had been challenged in his country and, if implemented, would indeed constitute a violation of the International Covenant. They were not currently in use.

51. The obligation to provide interpreters was regulated under the Code of Criminal Procedure, which provided that a judge must appoint an interpreter in the event that the proceedings involved documents or statements in languages other than Spanish. In addition, in cases where the accused did not understand Spanish, an interpreter had to be provided during court proceedings.

52. With respect to the right of appeal, he observed that the American Convention on Human Rights, ratified by Costa Rica in 1970, provided that during criminal proceedings, all persons had equal right to certain minimal guarantees, including the right to appeal the judgement to a higher judge or tribunal. Moreover, article 14 (5) of the International Covenant provided that "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law". Because the existing remedy of cassation applied only to sentences which were longer than six months, the Inter-American Commission on Human Rights had considered Costa Rica to be in violation of the International Covenant and the American Convention on Human Rights. Accordingly, his Government had proposed the creation of a chamber of penal review for sentences of less than six months. The proposal was currently being considered by the Legislative Assembly.

53. The terms "crimenes", "delitos" and "faltas de policia" represented legal distinctions based on the seriousness of the offence under Costa Rican law. In addition, recent legal reforms had abolished all forms of physical restraint or detention in civil matters except in cases of failure to pay child support. A public defender could be requested by a detainee at any time after he was deprived of his liberty, even if the trial had not begun.

Freedom of movement and expulsion of aliens (arts. 12 and 13 of the Covenant) (sect. VII of the list of issues)

54. Mr. GUTIERREZ (Costa Rica) said that the expulsion of aliens from the country was regulated by the Ministry of the Interior. In the past, aliens had been subject to administrative detention during expulsion proceedings. However, such detention had subsequently been declared inappropriate unless there were criminal grounds to justify it. Although aliens had the same rights as nationals, there were certain restrictions which might be provided by law. However, such restrictions could not narrow constitutional guarantees. In addition, any individual subject to an expulsion order had recourse to the remedy of habeas corpus.

55. His country had established a procedure for repatriation of refugees and would welcome the return of all refugees to their countries of origin. At the same time, all repatriations had to be voluntary and were subject to review. Requests for repatriation were granted upon verification that the refugee genuinely desired to return to his country. Costa Rica was seeking to assimilate those refugees who had chosen to stay in that country.

56. Mr. ANDO said that under article 19 of the Political Constitution, aliens did not have recourse to diplomatic protection except as provided in international agreements. He pointed out that if any country wished to exercise its right of protection under customary international law, Costa Rica had to accept that intervention.

57. Mr. GUTIERREZ (Costa Rica) said that that provision had been intended to prevent pressure being exerted by powerful nations against smaller ones. The concept had originated with a Latin American jurist, who had been the first to suggest that diplomatic initiatives were inappropriate in defence of alien or private parties. In practice, however, such initiatives were taken.

Right to privacy (art. 17 of the Covenant) (sect. VIII of the list of issues)

58. Mr. GUTIERREZ (Costa Rica) said that the existing regulations in respect of the right to privacy were to be found in the new chapter of the Civil Code, which had formed the basis for legislation under the Family Code. In addition, the Constitution and the Code of Criminal Procedure contained various provisions dealing with the right to privacy. For example, article 24 of the Constitution affirmed that while private documents were inviolable, the court could order search or seizure under certain circumstances. The Code of Criminal Procedure specified the conditions under which information could be seized or intercepted. The protection of privacy was also embodied in a series of provisions in the Penal Code. Among them were penalties for slander, defamation of character, publication of insulting material, wrongful seizure of correspondence, and publication of secret information.

The meeting rose at 1.05 p.m.

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Thirty-eighth session

SUMMARY RECORD OF THE 960th MEETING

Held at Headquarters, New York,
on Friday, 23 March 1990, at 3 p.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Second periodic report of Costa Rica (continued)

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of Costa Rica (continued) (CCPR/C/31/Add.10)

1. At the invitation of the Chairman, Mr. Gutierrez (Costa Rica) took a place at the Committee table.

2. The CHAIRMAN said that the Costa Rican representative would proceed to answer questions held over from section VIII of the list of issues.

3. Mr. WENNERGREN noting that, under article 24 of the Costa Rican Constitution, oral communications of the inhabitants of the Republic were inviolable, asked how such inviolability was protected under the Penal Code. He wondered whether information obtained by a police officer who surreptitiously listened to a conversation between a suspect and another person was legal and could be used as evidence in a court procedure. Article 24 also stated that correspondence which was seized, regardless of its kind, would have no legal effect. Did that mean that seized correspondence could never be used as evidence? Finally, he asked whether telephone tapping and electronic eavesdropping was permitted under Costa Rican law.

4. Mr. GUTIERREZ (Costa Rica) said that all such police actions were permissible provided that a judicial authority had authorized them. Police officers could take no action on their own initiative. According to the Code of Criminal Procedure, only a judicial authority could authorize the police to enter a person's home, to tap his telephone or interfere with his correspondence. If authorization was granted, the information obtained by such means would be admitted as evidence by a judge.

Freedom of religion and expression; prohibition of propaganda for war and incitement to national, racial or religious hatred (articles 18, 19 and 20 of the Covenant) (section IX of the list of issues)

5. The CHAIRMAN read out section IX of the list of issues concerning the second periodic report of Costa Rica, namely: (a) procedures for legal recognition and authorization of various religious denominations; (b) extent to which the Roman Catholic Church enjoyed privileged treatment as compared with other churches or religious groups; and (c) controls exercised on the press and mass media under Costan Rican law.

6. Mr. GUTIERREZ (Costa Rica), referring to section IX (a), said that under Costa Rican legislation, religious denominations had the right to practise their religion and to construct churches or places of worship. In order to be recognized, all that was required of a religious denomination was that it register with the Ministry of Foreign Affairs and Worship.

(Mr. Gutierrez, Costa Rica)

7. Referring to section IX (b), he said that the State subsidized the higher authorities of the Roman Catholic Church. While public schools provided Catholic religious instruction, a pupil could be excused from such instruction if he or she did not wish to receive it. Apart from those instances, the Roman Catholic Church received no other preferential treatment.

8. With regard to section IX (c), he said that, according to article 29 of the Constitution, everyone was permitted to communicate his thoughts by word of mouth or in writing and to publish them without prior censorship; however, they were responsible for abuses committed in the exercise of that right. Insults and libel published by the press were crimes. At the same time, the law of constitutional jurisdiction provided for the right to reply before the Constitutional Tribunal in summary form. There was no other Costa Rican legislation on control of the media.

9. Mr. FODOR asked whether the law requiring accreditation of journalists was still in force and, if so, what role the National Association of Journalists played in granting accreditation. He wished to know on what grounds the Association could refuse an application for accreditation, and whether Costa Rican law provided for recourse in such cases. Finally, he wished to know the penalty for engaging in journalism without a licence.

10. Mr. MYULLERSON requested information regarding the implementation of article 294 of the Penal Code. In particular, he requested statistics or examples of what was meant by "propaganda against the constitutional order".

11. Mr. ANDO requested information about the activities of foreign journalists in Costa Rica. He also wished to know whether Costa Rican television could receive broadcasts from abroad.

12. Mrs. HIGGINS asked whether Decree-Law 440 had been repealed or amended, particularly in the light of the advisory opinion of the Inter-American Court of Human Rights.

13. Mr. WENNERGREN noting that, according to article 93 of the Costa Rican Constitution, voting was a compulsory civic function, asked whether a person could be penalized for not participating in an election.

14. Article 28 of the Costa Rican Constitution stated that no political propaganda could be carried on in any way by clerical or secular persons invoking religious motives or making use of religious beliefs, and he wished to know the motives for that article and how it was applied in practice.

15. Mr. GUTIERREZ (Costa Rica) said that every profession, including journalism, was governed by the organic law of the relevant professional association. All professions were considered to be public corporations, since they were established by law; they were completely free from government control. The officials of each association were elected by the members, who were required to hold a degree from a Costa Rican university. Licences authorizing a person to exercise a particular

(Mr. Gutierrez, Costa Rica)

profession were granted by the association, not the State. A person must apply for admission to such an association, in accordance with the requirements under the law. If he was rejected even though he had met all the legal requirements, he had recourse to the remedy of amparo and to an administrative litigation tribunal.

16. A person engaged in journalism without a licence was doing so illegally and was subject to a fine. With regard to the case brought before the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, the Inter-American Commission on Human Rights, having received a complaint, had ruled that there had been no contradiction between the organic law of the Costa Rican Association of Journalists and the American Convention on Human Rights. That ruling was binding on Costa Rica. Subsequently, the Inter-American Press Association had requested the Government of Costa Rica to take the complaint to the Inter-American Court of Human Rights for an advisory opinion. The Court had issued an advisory opinion stating that there had been a contradiction between the American Convention on Human Rights and the law of the Association of Journalists. As a result, Costa Rica had both a binding ruling from the Inter-American Commission and an advisory opinion from the Inter-American Court. The Government had taken no action to amend the organic law of the Association of Journalists.

17. He did not recall that article 294 of the Penal Code had ever been applied or that anyone had been sentenced under that article. He believed that article 294 would be applicable only in cases in which a person called publicly for the violent overthrow of the Government; that had never happened.

18. Replying to Mr. Ando, he said that foreign correspondents were not subject to the regulations of the Costa Rican Association of Journalists. The only requirement for foreign correspondents was that they submit an application for accreditation to the Association. Moreover, Costa Rican legislation favoured the establishment of foreign news agencies and exempted them from taxes on their activities carried out in Costa Rica.

19. The current law requiring Costa Rican citizens to participate in elections had its origin in 1936, when voting had been declared to be an obligation punishable by a fine and the loss of the right to hold public office. In 1938, two justices who had not voted in elections that year had been dismissed. In 1949, when the current Costa Rican Constitution had been approved, voting had been declared a right. In 1959, article 93 of the Constitution had been amended and now stated that voting was a "primary and compulsory and civic function". However, a person was not required to prove that he or she had voted and failure to vote was no longer a punishable offence under the law.

20. The Supreme Electoral Tribunal was responsible for monitoring all political propaganda involving religious motives. The Court acted a posteriori, as provided by the Constitution, and it could forbid the use of religious propaganda, and had indeed done so.

21. Mrs. HIGGINS said that, if an international organ declared that a country's law was not in violation of an international treaty, the country should not fail to comply with that finding by amending the law to make it quite clear.

Freedom of assembly and association (articles 21 and 22) (section X of the list of issues)

22. The CHAIRMAN read out section X of the list of issues concerning the second periodic report of Costa Rica, namely, information about the number, membership and organization of trade unions in Costa Rica.

23. Mr. GUTIERREZ (Costa Rica) said that, according to the Ministry of Labour, there were 9,250 trade unions with 175,997 registered members. Trade unions were registered in the Registry of Social Organizations which was kept by the Ministry of Labour, and they were obliged to submit annual reports on changes in their guidelines. All trade union activities were regulated under the Labour Code of 1943, which had been amended in part. A new Labour Code had been drafted and was awaiting approval.

24. Mr. POCAR said that, according to article 26 of the Costa Rican Constitution, meetings on private premises needed no prior authorization, while those which were held in public places were regulated by law. He wished to know whether there was a distinction in Costa Rican law between meetings held on private premises which were private and meetings held on private premises which were open to the public. Was a meeting held on private premises but open to the public considered a meeting in a public place or a meeting in a private place? He wished to know what was the body which authorized meetings in public places, and what the conditions for such meetings were.

25. Mr. WAKO drew attention to article 22 of the Covenant and said that Costa Rica's solidarista movement of employers strengthened employers' control and undermined the trade unions. It was alleged the trade unions were even being displaced by that movement, especially in collective bargaining, and he would like some comment on that allegation.

26. Mr. GUTIERREZ (Costa Rica) said that private meetings were just what they appeared to be. Political meetings in public places must be authorized and were allowed starting six months before an election. Under the Electoral Code authorization must be requested in the locality concerned and ultimate authority for granting it rested with the Supreme Electoral Tribunal. The purpose was to avoid having two political meetings at the same place, as that might pose a threat to public order. When requesting such authorization, it was necessary to say why the meeting was being held and to provide assurances that it would be peaceful.

27. The decline of the trade union movement was due entirely to internal factors that had nothing to do with the Ministry of Labour. The laws did not favour the solidarista movement to the detriment of the trade unions and there was no discrimination against trade unions. The Government complied scrupulously with labour laws and fostered the harmonious development of trade unions. Article 6 of

(Mr. Gutierrez, Costa Rica)

the Law of Association ensured equal treatment for the solidarista movement and the trade unions. Direct arrangements for collective bargaining existed and had proved to be effective instruments. They were especially popular in the agricultural and service sectors. The workers had expressed a clear preference for the solidarista movement because the trade unions lacked internal democracy and failed to satisfy workers' demands. A new Labour Code was being developed to update and improve the collective bargaining system and labour authorities intervened effectively to protect the rights of labour where management created obstacles. Allegations by some union leaders that coercion was used to get workers to join the solidarista movement had never been proven, and an inspector's office existed to protect workers against such coercion. The Government did not discriminate against trade unions; it merely protected the worker's freedom of choice. The solidarista organizations operated under procedures authorized by law and workers and management had created a fund to aid dismissed workers.

28. Mr. POCAR, referring to article 21, said that there were two systems of authorization, one for political meetings and one for non-political meetings. He wondered who decided whether or not a meeting was political and whether such a decision might become a pretext to refuse to authorize any kind of meeting.

29. Mr. GUTIERREZ (Costa Rica) said that only public meetings conducted by duly registered political parties came within the purview of the Electoral Code and that recourse procedures were available to protect against arbitrary decisions.

Protection of family and children (articles 23 and 24) (section XI of the list of issues)

30. The CHAIRMAN read out section XI of the list of issues concerning the second periodic report of Costa Rica, namely: (a) additional information concerning the activities of the National Children's Board and the Board's accomplishments and (b) information concerning legal provisions enacted pursuant to article 71 of the Constitution relating to the protection of children in respect of employment and of women and children at work.

31. Mr. GUTIERREZ (Costa Rica), referring to section XI (a), said that the National Children's Board had existed since 1930 and was governed by article 55 of the Political Constitution. The Board protected abandoned children, sought temporary homes for them, supervised adoption, ensured financial support from parents and was a legal party in all court cases involving children. It also ran children's centres.

32. Turning to section XI (b), he drew attention to articles 51 and 52 of the Political Constitution and articles 1, 34 and 35 of the Family Code. Minors required permission of the National Children's Board in order to work.

33. Mr. DIMITRIJEVIĆ referring to article 23, paragraph 4 of the Covenant, asked whether divorce or only separation was possible in Costa Rica, and if so, who made the decision. He also wondered what influence the Church had in such matters, whether the spouses were given equal treatment and who, in practice, obtained custody of children.

34. Mr. ANDO, referring to paragraph 83 of the report, asked what the situation was in respect of the acquisition of Costa Rican nationality in the case of a naturalized parent.

35. Mr. COORAY, referring to article 23, paragraph 1, said that the Catholic Church considered the family the natural unit of society and he wondered how the family was protected by the Church in Costa Rica. He also wanted to know under what conditions a marriage was prohibited.

36. Mr. GUTIERREZ (Costa Rica) said that a marriage was dissolved either by death or by divorce, and that divorce could be obtained not only through the fault of a spouse but also by mutual consent. The Church had no control over divorce proceedings, which were handled by the family courts, and spouses enjoyed equal status. Custody of children under the age of seven was automatically given to the mother, but with older children custody might be awarded to either parent.

37. In respect of naturalization and its effect on children, he said that a request could be made to have children naturalized.

38. The Church refused to recognize the dissolution of a marriage without elaborate procedures. Under the Family Code, marriage could be prohibited because of an existing marriage, consanguinity or absence of consent.

Right to participate in the conduct of public affairs (article 25) (section XII of the list of issues)

Rights of persons belonging to minorities (article 27) (section XIII of the list of issues)

39. The CHAIRMAN read out sections XII and XIII of the list of issues, namely, whether members of minority groups had equal access to public service and how such access was ensured, and information on any factors and difficulties in the effective enjoyment by minorities of their rights under the Covenant.

40. Mr. GUTIERREZ (Costa Rica), said that Costa Rica had a rather homogeneous population; its only minorities were the persons of African descent on the Caribbean islands, who accounted for 2 per cent of the population, and the indigenous minority, accounting for 0.5 per cent of the population. There was one province in which people of African origin were in the majority, and one or more of the representatives to the National Assembly from that province were usually of mixed race. Members of the indigenous population held the most important posts in the National Institute for Indigenous Affairs.

(Mr. Gutierrez, Costa Rica)

41. Until 1948, black people of Jamaican origin had been unable to travel freely in Costa Rica; that restriction no longer existed.

42. In the province of Limón, the language of education had at one time been changed from English to Spanish, but it had been decided in the end that education should be bilingual . At present, consequently, there were no restrictions preventing the indigenous population from exercising its rights under the Covenant.

43. Mr. WENNERGREN asked whether articles 131 and 142 of the Constitution, under which only laymen could serve as President, Vice-President or Cabinet minister, were compatible with the Covenant.

44. Mr. WAKO asked whether the population growth of about 3 per cent annually was reflected among the minorities, and what had been the results of the comprehensive development project for the indigenous population referred to in Costa Rica's first report to the Committee. Noting the provisions of article 95 (6) of the Constitution, which guaranteed the representation of minorities in the National Assembly, he asked whether seats were reserved there for such representatives.

45. Mr. COORAY asked whether any laws had been enacted or proposed for the purpose of safeguarding the right of the indigenous population to property.

46. Mr. NDIAYE asked whether the constitutional provisions discriminating against Catholic clergymen could not be changed.

47. Mr. GUTIERREZ (Costa Rica) said that the provision concerning the Catholic clergy reflected the political and cultural attitudes prevalent when the Constitution had been drafted. If it constituted a violation of the Covenant, the Committee should point that out.

48. The main aim of the development project referred to by Mr. Wako had been to create a National Commission for Indigenous Affairs whose main activity would be to actively defend indigenous land ownership. That aim had been achieved.

49. No seats in the National Assembly were reserved for members of minorities; as he understood it, article 95 (6) of the Constitution referred not to ethnic groups but to political minorities.

50. It was difficult to give precise figures for indigenous or Caribbean minorities, as categorization on that basis had been eliminated from the census beginning in 1956. The percentages he had given were the estimates usually cited.

51. Mr. WAKO thanked Mr. Gutierrez for the clarification he had provided and noted that he had referred to article 95 (6) in connection with ethnic minorities because Costa Rica's first report to the Committee had cited the article in that connection.

52. Mr. WENNERGREN asked whether all officials were, in fact, required to swear an oath before God, as required by article 194 of the Constitution.

53. Mr. GUTIERREZ (Costa Rica) said that the constitutional oath embodied in the Constitution went back to the Constitution of 1812. With respect to Mr. Wako's comments, he said differences of interpretation might exist concerning specific articles of the Constitution; he had stated his own understanding of article 95 (6).

54. The CHAIRMAN invited Committee members to make their final comments on Costa Rica's report.

55. Mr. PRADO VALLEJO expressed complete satisfaction with the very cordial and open dialogue that had taken place. Costa Rica was not only carrying out all the provisions of the Covenant in its own territory but had helped to democratize the entire Central American region. Although some minor discrepancies might remain, there could be no doubt of Costa Rica's overall determination to implement the Covenant.

56. Mrs. HIGGINS said that, in formal terms, Costa Rica's report was rather thin and perhaps did not even formally comply with the Committee's guidelines. Costa Rica's record with respect to human rights was, of course, exemplary, but had information on what was actually happening in the country been included in the report a deeper exchange with the Committee might have been possible.

57. The situation with respect to lengths of custody and delays in filing charges remained somewhat unclear, and she had been somewhat surprised at the extent of the power granted judges to order wiretaps. Those were small points, however; overall, she had been impressed by the solid dedication of Costa Rica to the cause of human rights.

58. Mr. EL-SHAFEI expressed his satisfaction and pleasure at the way in which the dialogue had been conducted. Costa Rica's second periodic report, like its first, reflected the situation in that country with great precision and clarity, and Mr. Gutierrez' introduction to the report and his co-operative attitude had made the Committee's work much easier. The series of efforts Costa Rica had undertaken to review and extend human rights showed how serious its legislature was about removing inconsistencies with the Covenant and were in conformity with Costa Rica's long history of judicial independence and tolerance.

59. Mr. FODOR, observing that the Committee's concluding observations usually focused on certain anxieties regarding the human rights situation in a country, said that its task had been easier than usual in the case of Costa Rica. Any system, however, could be improved, and perhaps in Costa Rica some areas to consider would be a decrease in the length of pre-trial detention regardless of the seriousness of the charge, a fuller implementation of article 14 (5) of the Covenant in so far as the right to appear before a court of the first instance was concerned, and further efforts to obtain equality for women. It was particularly

(Mr. Fodor)

encouraging that a nation that was not economically powerful had such a strong tradition of respect for human rights; the other countries of the region should take Costa Rica as a model.

60. Mr. WAKO observed that Costa Rica had not rested on its laurels, despite its long tradition as a champion of human rights. He looked forward to learning in the next periodic report what had become of the various bills pending before the Legislature, such as the bill proposing a reform of the Penal Code, the Code of Penal Procedure, the Judiciary Organization Acts and the distribution of the courts, and the draft Prison Code.

61. Mr. WENNERGREN said that, although Costa Rica had a very good record of commitment to human rights, he still had some minor concerns regarding, for example, the protection against medical experimentation, which he hoped would be the subject of legislation; or certain anachronistic laws either favouring or discriminating against religion in political life; perhaps it was time to repeal them in the interests of freedom of expression.

62. Mr. DIMITRIJEVIĆ said that the countries that attracted the attention of the Committee were not only the ones with the bad records. Costa Rica, with its excellent record, had many features in common with countries where the human rights situation was deplorable, and the Committee was intrigued to understand why things worked so well in Costa Rica. The Committee, therefore, regretted that the report had not been written differently. Usually, bureaucratic reports that merely quoted legislation and gave little information regarding the practice in a country were written by Governments with something to hide, certainly not the case in that instance. Fortunately, the particularly knowledgeable representative had provided much oral elucidation, but those who wished to know about the Costa Rican success story would need to read the summary records. He therefore hoped the next report would give information about the evolving practice in the country. He would not repeat the minor concerns raised by a number of the Committee members, for he was certain that Costa Rica would move away from ideas that had been progressive in their day but were now outdated.

63. Mr. COORAY, expressing confidence that Costa Rica would examine its legislation with a view to bringing it into consonance with the Covenant, said that he had been more than ever convinced that Costa Rica regularly made a determined effort to implement the Covenant.

64. Mr. ANDO said that the human rights situation in Costa Rica was nearly perfect, the few discrepancies with the Covenant being mostly formal ones, such as the length of pre-trial detention, the possibility of judicial excess in some instances, and a perhaps overly powerful association of journalists. He hoped that the third periodic report would tell the Committee more about the promising programmes for the protection of indigenous minorities. The case of Costa Rica showed how essential was the determination of the people themselves to observe human rights.

65. Mr. MYULLERSON said that the Committee had had a good discussion with the excellent jurist representing the Costa Rican Government. Perhaps the country's well-known human rights record was due in part to the fact that so many good lawyers held high-level posts.

66. Mr. POCAR said that the effective implementation of the Covenant depended to a large extent on the system in place in a country, and hence the stress on legislative and other measures embodying its provisions. He welcomed the recent reforms outlined in the Costa Rican representative's oral introduction. The establishment of a Constitutional Tribunal that placed the Covenant on a par with the Constitution offered a very effective means of gradually reviewing the country's legislation so as to eliminate any remaining discrepancies.

67. The CHAIRMAN noted that the Committee had had an excellent dialogue with the representative of Costa Rica precisely because of the deficiencies of the report that had necessitated able supplementation. It had been the Committee's good fortune to have not an ordinary ambassador but a person of great erudition who was disposed to listen to the Committee's concerns and give the fullest possible answers in all frankness.

68. Mr. GUTIERREZ (Costa Rica) said that when it came to the observance of human rights there were three categories of countries: those where the rights of the majority were consistently violated; those where the rights of a significant minority were consistently violated; and those where violations occurred occasionally but without any political intention. Just as individuals sinned, so could States, and certainly there were matters in Costa Rica that required it to make progress.

The meeting rose at 5.55 p.m.

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HUMAN RIGHTS COMMITTEE

Twenty-eighth session

SUMMARY RECORD OF THE 961st MEETING (CLOSED)

Held at Headquarters, New York,
on Monday, 26 March 1990, at 10 a.m.

Chairman: Mr. LALLAH

CONTENTS

Consideration of communications under the Optional Protocol to the Covenant

* All persons handling this document are requested to respect and observe its confidential nature.

N.B. This record is subject to correction. Participants wishing to submit corrections during the session of the Committee are asked to hand them, in typewritten form, to the Secretary of the Committee. A consolidated corrigendum of the summary records covering the closed meetings of the Committee will be issued shortly after the session.

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The meeting was called to order at 10.30 a.m.

CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE COVENANT

Communication No. 275/1988

1. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications for the thirty-eighth session, pointed out that the communication currently before the Committee carried the heading "Decision of admissibility". Since decisions on admissibility were no longer being considered by the plenary, perhaps the communication should be called decision on inadmissibility.

2. The author of the communication, an Argentine citizen, alleged that her eldest son had been abducted in Argentina in August 1976 by persons belonging to or associated with the Argentine police, security forces or armed forces. The author's daughter and another of her sons had been detained in November 1976 and their whereabouts had been unknown since that time. The author claimed that the enactment of the "Finality Act" and the Due Obedience Act constituted violations by Argentina of its obligations under article 2 of the International Covenant on Civil and Political Rights. In particular, she claimed that the disappearance of her children had never been fully investigated.

3. In its observations, the State party pointed out that the disappearances had taken place in 1976 during the period of military government, 10 years prior to the entry into force in Argentina of the Covenant and of the Optional Protocol. It emphasized that both in general juridical practice and in the specific area of treaty law, the rule of non-retroactivity was firmly established. The State party therefore concluded that the communication should be declared inadmissible ratione temporis.

4. Recalling that the International Covenant and the Optional Protocol had entered into force in Argentina on 8 November 1986, the Committee, in its draft decision, observed that the Covenant could not be applied retroactively and that it was precluded rationae temporis from examining disappearances that had occurred in 1976. The communication was therefore inadmissible.

5. With respect to the question whether there had been any violations of the Covenant by the State party concerned subsequent to its entry into force, the Committee, in its draft decision, recalled its prior jurisprudence to the effect that article 2 of the Covenant constituted a general undertaking by States and could not be invoked by an individual in isolation and unrelated to a substantive claim.

6. During the previous consideration of the communication, it had been suggested that there might be a violation of article 9 (5) of the Covenant. Consideration of the case had therefore been deferred and the State party had been requested to provide more information on that matter. In response, the State party had pointed out that although the complainant could have instituted civil proceedings for

(Mrs. Higgins)

compensation, she had not done so. Moreover, the period of limitations for instituting civil actions for compensation had expired. That response had been transmitted to the complainant, who had requested a 60-day postponement. There was no need to grant that postponement since the author had not made a formal complaint with respect to compensation.

7. Mr. POCAR said that he found the draft decision acceptable. If the victim had initiated civil proceedings, he would have entered a reservation. However, as that was not the case, he was prepared to accept the draft decision as recommended by the Working Group.

8. With respect to the communication, he would prefer not to change the heading, namely, "decision on admissibility". While he approved in principle of the new shorter format for decisions, he observed that since the Committee was not a court, it was dependent on the facts as provided by the parties themselves. In the section in which the facts were presented, it was not clear whether those facts were alleged by one or the other of the parties or whether they had agreed on those facts. Clarification of that section was needed.

9. Noting that paragraph 1 of the draft decision contained the date of entry into force for Argentina of the Covenant and the Optional Protocol, he wondered if that information would not be better placed in the section on Proceedings before the Committee. In the second line of paragraph 5.2, the words "disappearances that occurred in 1976" should be replaced by the words "violations which occurred before the entry into force of the Covenant". In the penultimate line of paragraph 5.3, the words "and of the Optional Protocol" should be deleted. With reference to the last line of that same paragraph, he wondered whether it was appropriate to remind all States parties that they were under a general obligation to provide remedies.

10. Mr. EL-SHAFEI said that if the author had claimed a remedy under article 9 (5) of the Covenant, he would have been reluctant to support a decision of inadmissibility. However, in the case in question, the Committee was helpless to assist the complainant. The decision of inadmissibility was legally correct although unjust on moral grounds.

11. Mr. MYULLERSON said that, while he was in general agreement with the draft decision, he supported the statement of Mr. Pocar with respect to the final sentence of paragraph 5.3. In his opinion, that sentence should be deleted. He also agreed with Mr. El-Shafei that while the Committee had made a correct decision on legal grounds, a moral injustice was being done to the family in question.

12. Ms. CHANET recalled that in a recent decision on a similar matter, the Committee Against Torture had declared three cases inadmissible but had also indicated that compensation should be provided for the victims. While this was a possible way of addressing the issue, she shared the concerns of Mr. Pocar and Mr. Myullerson with respect to the final sentence of paragraph 5.3 of the draft decision. Furthermore, a general appeal to States parties to respect the obligation of States to provide remedies for victims of events which had occurred

(Ms. Chanet)

before the enforcement of the Covenant and the Optional Protocol in that State did not belong in the type of communication under consideration.

13. Mr. AGUILAR said that he agreed with other Committee members that declaring the communication inadmissible might be unjust. However, there were no legal grounds for declaring the case admissible. He agreed with Mr. Myullerson that the last line of paragraph 5.3 should be deleted. He also endorsed Mr. Pocar's suggestion that that last line of paragraph 5.2 should refer to "violations" rather than "disappearances". With respect to paragraph 1, the sentence relating to the date of entry into force for Argentina of the Covenant and Optional Protocol was ambiguous. It was not clear whether the author herself had submitted that information. He suggested that all decisions should indicate, in a separate paragraph, the date of entry into force of the Covenant and Optional Protocol for the State party concerned.

14. Mr. DIMITRIJEVIĆ said that while he had moral qualms about the decision of inadmissibility, he was obliged to agree with it. In discussing the current case, one overriding concern was that States which were contemplating ratification of the Optional Protocol might be very hesitant to face a Committee which might investigate their past actions.

15. With respect to paragraph 1 of the draft decision, he agreed that the reference to the entry into force for Argentina of the Covenant and Optional Protocol should be deleted. That information could be indicated in a separate paragraph. With respect to paragraph 5.2, he agreed that the word "disappearances" should be eliminated and suggested that it should be replaced by the words "alleged violations".

16. With respect to paragraph 5.3, he supported the suggestion to delete the words "and of the Optional Protocol" in the penultimate line. The last line of that paragraph reflected the feelings of all the Committee members that things as they stood were unjust and unfair. Rather than delete that sentence, he suggested that it should be modified along the following lines: The Committee reminds the State party that it remains under a moral obligation to provide remedies for victims of disappearances or for their dependants, and to investigate thoroughly instances of disappearances.

17. Mr. COORAY said that he supported the Working Group's recommendation of inadmissibility. With respect to paragraph 1, he agreed that the date of entry into force for the State party concerned of the Covenant and the Optional Protocol should be indicated under a separate heading.

18. He endorsed the suggestion by Mr. Pocar that there should be separate presentations of the facts alleged by each party and an additional paragraph indicating the grounds for the draft decision. Lastly, he had misgivings about the suitability of the word "temporal" in paragraph 5.2 because it was ambiguous.

19. Mr. NDIAYE said that he supported the observations made by Mr. Pocar with regard to the presentation of the draft decision. The reference to the entry into force of the Covenant and the Optional Protocol for Argentina would be more suitable in a paragraph dealing with questions of substance. He agreed with Mr. Cooray concerning the last sentence of paragraph 5.3. The Committee should not convey the impression that it wished to give retroactive effect to the Covenant and the Protocol. Nor should it express its views on the morality of the situation. Accordingly, he favoured the deletion of that sentence.

20. Mr. PRADO VALLEJO said that he generally supported the proposals made to improve the presentation of the draft decision. Nevertheless, he felt that the last sentence of paragraph 5.3 should be retained, although the wording might be changed. The sentence referred to "events", not violations, occurring after the entry into force of the Covenant. The military dictatorship and the democratic Governments of Argentina had taken a number of steps, including the enactment of laws or decrees, to ensure the impunity of those who had committed human rights violations. Similar measures might be taken in the future. Accordingly, the Committee should clearly indicate that the State party had a moral obligation under the Covenant to provide remedies for human rights violations. The Committee should clearly indicate that it was concerned at the situation resulting from the very large number of cases of disappeared persons in Argentina. It should bear in mind that the position it took in that regard would affect its image in the country concerned and in Latin America.

21. The CHAIRMAN, speaking in his personal capacity, said that there appeared to be general agreement about the conclusions reached in the draft decision. He also felt that the various headings were somewhat misleading and that most of them could be deleted. The heading preceding paragraph 5.1 could be amended to read "Issues to be considered by the Committee". The conclusion set forth in paragraph 2.2 might be based on a misinterpretation of the Argentinian Civil Code. It was unlikely that persons who were absent for a period of six years would be considered legally dead. Accordingly, he felt that that paragraph was unnecessary and could be deleted.

22. Referring to paragraph 5.2, he agreed with Mr. Cooray that the word "temporal" was ambiguous and that a more suitable word could be found. Lastly, he agreed that the last sentence of paragraph 5.3 should be deleted. Although he understood the fears expressed by Mr. Prado Vallejo, he thought that such views could be better expressed during the examination of reports or in general comments.

23. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications, said that there was no problem about deleting the reference to the entry into force of the Covenant and the Optional Protocol in paragraph 1 or placing it elsewhere in the text. The heading preceding paragraph 2.1 could be changed to read "The background". She agreed with Mr. Lallah that it would be best to delete paragraph 2.4 and supported his suggestion concerning the heading preceding paragraph 5.1. Referring to paragraph 5.2, she said that the phrase "temporal application" could be replaced by the phrase "application ratione temporis" and supported the amendment proposed by Mr. Pocar to the second sentence.

(Mrs. Higgins)

24. There seemed to have been a general misunderstanding about the Committee's intentions in the last sentence of paragraph 5.3. The Working Group had not sought to make a moral appeal; the sentence clearly referred to events occurring after the entry into force of the Covenant. Argentina had enacted laws that eliminated remedies not only for events that had occurred under the military dictatorship, but also for those occurring under the Government of President Alfonsín. The message to be conveyed was that the Committee would be able to look into facts relating to events occurring after the entry into force of the Covenant. Accordingly, she was in favour of retaining the sentence. Alternatively, it might be possible to insert a new paragraph in which the Committee noted that Argentina remained under an obligation in respect of events occurring after the entry into force of the Covenant to investigate thoroughly alleged disappearances and, wherever applicable, to provide remedies for the victims.

25. Ms. CHANET said that she did not feel that the last sentence of paragraph 5.3 should be retained because there was no need to remind the Government of Argentina of its obligations under the Covenant, which were self-evident. Furthermore, it was somewhat awkward to tell the State party how to implement the Covenant in that regard. The Committee could express views on the juridical aspects of the complaint, but should not enter into the question of moral obligations on the part of the State party.

26. Mr. WENNERGREN said that evidence might be found of human rights violations occurring before the entry into force of the Covenant in 1986. If such evidence had been suppressed by the Government in 1988, for example, that would have been a violation of the Covenant. The State party would then be obliged to conduct an investigation and provide a remedy. In its decision, the Committee could state that events might have occurred after 1986 in respect of which the State party had obligations under the Covenant. Accordingly, he supported the proposal made by Mrs. Higgins concerning paragraph 5.3.

27. Mr. EL-SHAFEI said that the thrust of paragraph 5.3 was not to remind Argentina of its obligation to implement the Covenant, but rather to point out that it had a certain moral obligation to investigate and make compensation even though it had no legal obligation for events that had taken place prior to the entry into force of the Covenant. In that connection, he supported the observations made by Mr. Dimitrijević.

28. Mr. NDIAYE said it should be clearly stated that the State party had a legal, not a moral obligation in respect of events occurring after the entry into force of the Covenant. Nevertheless, he did not feel that there was any particular purpose to be served by reminding a State party of such an elementary rule.

29. The CHAIRMAN said it seemed to him that the last sentence of paragraph 5.3 was especially relevant to the earlier reference to article 2. He wondered whether it might not be moved up so as to show that the author did not complain to the Committee of a violation in respect of remedies, but rather in respect of events which could have constituted violations prior to the entry into force of the

(The Chairman)

Covenant and of the Optional Protocol for Argentina. As it stood, the paragraph seemed to be going from article 2 remedies to events prior to the entry into force of the Covenant and then back to States' obligations to provide remedies in respect of events occurring after the entry into force of the Covenant.

30. Mr. DIMITRIJEVIĆ agreed with previous speakers who had argued that the Committee should not discuss the State party's moral obligations. He thanked Mrs. Higgins for explaining the reasons that had led the Working Group to include the sentence under discussion indicating that States parties still had a legal obligation for events occurring after the entry into force of the Covenant. It would establish that the Committee would not be prevented from considering similar communications in future.

31. He agreed that the issue should be dealt with in a separate paragraph, which should refer to the Committee's prior jurisprudence. He suggested the following wording:

> "The Committee finds it necessary to remind the State party that it remains under the obligation, in respect of events occurring or situations continuing after the entry into force of the Covenant, to investigate thoroughly the violations of the Covenant and to provide remedies for victims or for their dependants."

32. The Committee should refer not only to disappearances, but to all violations. Although the paragraph might be considered redundant, it was in keeping with the Committee's jurisprudence and provided a timely warning to States that the Committee would be prepared to consider future cases, in view of the possibility that other disappearances might not be cleared up and that painful situations might continue even if they resulted from events occurring prior to the entry into force of the Covenant. It would also send a message to public opinion in Argentina and Latin America.

33. Mr. POCAR said the wording proposed by Mr. Dimitrijević was very helpful. From the beginning, he had understood the last paragraph to refer to events occurring after the entry into force of the Covenant. What worried him about the last sentence of paragraph 5.3 was the reference in general to all States parties. Also, the reference, in Mr. Dimitrijević's proposal, to continuing situations might be misleading.

34. He would prefer the Committee to make no reference at all to moral implications. If such a reference was retained, it should be moved to paragraph 5.2, as an additional sentence.

35. Mrs. HIGGINS speaking as Chairman/Rapporteur of the Working Group on Communications, said it seemed that the majority of members were against including any reference to moral obligations. The issue remained whether the last paragraph served a purpose. It should be borne in mind that there was the special circumstance that legislation in the case under discussion eradicated remedies not only in respect of events occurring before the entry into force of the Covenant,

(Mrs. Higgins)

but also in respect of events occurring after the entry into force of the Covenant. It was not just a question of telling Argentina something which Argentina must already know, but of sending a message to potential victims, encouraging them to look at the facts carefully and to place them chronologically. She hoped the Committee could send that message; indeed, it had on other occasions sent signals regarding admissibility on different grounds.

36. She agreed that the sentence could be incorporated in a separate paragraph, and found Mr. Dimitrijević's version quite helpful. She shared Mr. Pocar's concern regarding the reference to continuing situations; it should be eliminated.

37. In the case under consideration, the issue was one of remedies, and what the Committee was saying was that there were no remedies in respect of events which had occurred before the entry into force of the Covenant. The remedy had to be attached to the violation. The addition of a reference to continuing situations would merely confuse the issue. She suggested that Mr. Dimitrijević's proposed text might be adopted, but without the reference to continuing situations.

38. Mr. NDIAYE said that the new wording should be placed before paragraph 5.3, rather than at the end of that paragraph. The argument supporting the decision should be presented before the statement of the decision.

39. The Committee should consider very carefully whether a fact occurring before the entry into force of the Covenant which had continuing effects after the entry into force was being systematically excluded from the sphere of application of the Optional Protocol. That question had not been dealt with.

40. Ms. CHANET said she was concerned that the new wording might completely close the door to any recourse based on prior events. For the sake of compromise, she would agree to having the sentence placed in a separate paragraph, but she felt it should not be limited to events occurring after the entry into force of the Covenant. Moreover, it was important to bear in mind that after the entry into force of the Covenant, the State party was obligated to abide by all its provisions, including those relating to torture and other violations of civil and political rights.

41. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications, said that Ms. Chanet was reopening a question that was absolutely fundamental, namely, the issue of whether the Committee should now signal that it did have competence to deal with claims for the non-availability of remedies in respect of acts occurring before the entry into force of the Covenant if they had continuing adverse effects. On the other hand, the Working Group had decided in the case under consideration that, in respect of events occurring before the entry into force of the Covenant, the Committee could not deal with claims of lack of remedy. Torture or disappearance did not happen continuously. The Committee should send the signal that if the Government invoked the Finality Act or the Due Obedience Act in respect of events occurring subsequent to the entry into force of the Covenant, victims would be able to come to the Committee. The Working Group would have great difficulty reopening the entire basis of the case.

42. The CHAIRMAN said he thought there had been some misunderstanding of the recommendation submitted by the Working Group. What the Committee had done was ask the author what her real complaint was, and whether it related to the lack of remedies. As it had developed, she was not seeking civil remedies but wanted the perpetrators of the alleged violations prosecuted. She had not applied for other remedies; had she done so, that would have been a different matter.

43. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications, said that it was important to resolve the issue because it would have a bearing on the next case to be taken up by the Committee. What had to be resolved was whether remedies were available to complainants even in respect of acts that had occurred before the entry into force of the Covenant. Her view was that they clearly were not, and that had been the basis on which the Working Group had advanced the case.

44. Mr. WAKO said that the wording proposed by Mr. Dimitrijević was helpful, although a bit diluted, since it left out the word "disappearances", which had been used in the original text. Since the case under consideration had to do with disappearances, and the Committee wished to express its concern in that regard, it should retain that word in its final draft. He also suggested that the paragraph should reproduce the text of the Committee's own general comment on article 6, relating to disappearances.

45. Mr. PRADO VALLEJO pointed out that in the interest of consensus, he was willing to agree with the wording proposed by Mr. Dimitrijević. What was most important was that the paragraph should be included somewhere in order to sound the alarm in anticipation of what was likely to transpire in Argentina in future. It had already been reported in the news that other measures would soon be enacted which would preclude any type of investigation and any type of remedy for cases similar to the one under consideration.

46. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications, suggested that the text proposed by Mr. Dimitrijević might be amended to replace the reference to continuing "situations" by a reference to "violations". That should give the flexibility needed to enable the Committee to reach consensus.

47. Ms. CHANET said that the new wording proposed by Mrs. Higgins was helpful; however, she was especially concerned about violations after the entry into force of the Covenant. After its entry into force, the Covenant had to be observed in full, not just with regard to disappearances.

48. Mr. DIMITRIJEVIĆ suggested that the text might now read as follows:

> "The Committee finds it necessary to remind the State Party that it remains under the obligation, in respect of events occurring or violations continuing after the entry into force of the Covenant to investigate thoroughly disappearances and to provide, where applicable, remedies for the victims and their dependants."

(Mr. Dimitrijević)

49. He still wondered, however, whether the text should refer only to disappearances or whether it should refer to all violations.

50. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group on Communications, suggested that, in order to take into account the concern expressed by Ms. Chanet, the relevant portion of the text might be amended to read as follows: "In respect of violations which occurred in the past or continued after the entry into force ...".

51. With regard to Mr. Wako's concern regarding disappearances, she was willing to accept either the wording suggested by him or the wording revised by Mr. Dimitrijević.

52. Mr. El-SHAFEI said that he would have favoured the insertion of a shorter paragraph, after paragraph 5.2, on the responsibility of the Argentinian authorities in disappearance cases, but as progress was being made, he would support the longer version of paragraph 5.3 as revised.

53. The CHAIRMAN said that he would take it there was general agreement that the last sentence of paragraph 5.3 should be amended along the lines proposed by Mrs. Higgins and Mr. Dimitrijević, with the final wording left to the Working Group.

54. Mr. NDIAYE suggested that a new paragraph explaining the grounds for the decision be inserted before paragraph 5.3. Moreover, the wording of paragraph 5.4 should be made more explicit rather than simply refer to prior jurisprudence.

55. Mrs. HIGGINS held to the view that the paragraphs were in the proper order. The particular case must be dealt with first; then a message must be conveyed to other victims that the Committee might be able to help them in other circumstances.

56. Mr. PRADO VALLEJO said that the wording in Spanish of paragraph 5.4 implied that no one had the right to prosecute another person who had committed a crime. However, criminal justice systems the world over allowed for such action.

57. Mrs. HIGGINS responded that such provisions did not appear in the Covenant, which, nevertheless, did not take away that right under domestic law. Paragraph 5.4 was an accurate statement of established jurisprudence on the matter. A paraphrase of the section in quotations might clarify it, however.

58. The CHAIRMAN said that the Covenant did not establish the right of an individual to request a Government to prosecute a case.

59. Mr. WENNERGREN said that he intended to write an individual opinion explaining his personal views on the obligations of States parties subsequent to entry into force of the Covenant.

60. The CHAIRMAN said that he would take it that the Committee wished to adopt the draft decision recommended by the Working Group subject to the amendment of the last sentence of paragraph 5.3, which would become paragraph 5.4, and would read as follows: "The Committee finds it necessary to remind the State party that it remains under an obligation, in respect of violations occurring or continuing after the entry into force of the Covenant, thoroughly to investigate alleged violations and to provide remedies, were applicable, for victims or their dependants."

61. It was so decided.

62. Mrs. HIGGINS, speaking as Chairman of the Working Group on Communications, introduced the draft decision on communications Nos. 343, 344 and 345/1988, which would be taken together as the three cases referred to closely related events. The authors were citizens of Argentina writing on behalf of relatives who had died or disappeared in 1976. They claimed that the Law of Due Obedience was a violation of article 2 of the Covenant. The main issue was that military personnel holding low rank were considered to be under orders, and thus immune from prosecution for violations. Local remedies were considered exhausted, as the case had been brought to court, but the accused had been set free under that Law. The authors had requested that the law be abrogated, in paragraph 2.6. As reported in paragraph 4.3, they had not begun civil proceedings aimed at obtaining compensation, as their purpose was to see those who had committed crimes brought to justice.

63. She suggested that the wording of paragraphs 5.3 and 5.4 be amended to match the wording of the corresponding paragraphs of the decision on communication No. 275, which was very similar.

64. The CHAIRMAN agreed with Mrs. Higgins that the previous communication should have been considered separately from the three now before the Committee, as the latter had not been referred to the State party.

65. Mr. EL-SHAFEI felt that the decision should emphasize the incompatibility of the Law of Due Obedience with article 2 of the Covenant, but found no such emphasis in the draft. He wondered if the Law of Due Obedience applied to future violations or only those committed in the past.

66. Mr. de ZAYAS (Secretary of the Committee) said that the text of the law referred only to crimes committed under the military government up to December 1983.

67. The CHAIRMAN said that he would take it that the Committee wished to adopt the decisions recommended by the Working Group on Communications Nos. 343, 344 and 345/1988, subject to the proposed amendments of paragraphs 5.3 and 5.4.

68. It was so decided.

The meeting rose at 12.55 p.m.